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NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCALS 329 AND 851, AFL-CIO, ET AL,
Petitioners

versus

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONER'S PETITION FOR CERTIORARI

BRIEF FOR PETITIONERS

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71PP

QUESTIONS PRESENTED

WHETHER THE RATIO-RANK FORMULA RECOMMENDED BY THE COURTS BELOW AS THE MOST EQUITABLE MANNER OF MERGING THE SENIORITY LIST OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCALS 307, 329, 851 and 1576 IS THE FAIREST METHOD OF MERGING THE SENIORITY LIST IN LIGHT OF THE VASTLY DIFFERENT SENIORITY STANDARDS EMPLOYED BY THE LOCALS PRIOR TO THE MERGER.

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versus

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONER'S PETITION FOR CERTIORARI

BRIEF FOR PETITIONERS

OPINION BELOW

The opinion of the Court of Appeals below (Appendix A, infra) was not reported. The interim order in the case below in District Court entered on the 22nd day of March, 1983, was not reported.

JURISDICTIONAL GROUNDS IN THIS COURT

The judgment of the Court below (Appendix A, infra), was entered on October 17, 1984. Rehearing was not sought. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) (1966 and Supp. 1984).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fifth Amendment, United States Constitution, which provides:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law; . . ."

2. The Fourteenth Amendment, § 1, United States Constitution, which provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. The Statute under which the Petitioners were found to have violated the civil rights of its workers through the maintenance of segregated unions was Title VII of the Civil Rights Act of 1964 § 2000e, et seq. 42 U.S.C. § 2000e-2(c)(2) (1966) which provides the following:

(c) It shall be an unlawful employment practice for a labor organization—

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or natural origin; . . ."

4. The statute which upholds the validity of the different standards employed by each Local to compute seniority prior to the merger is found at 42 U.S.C. § 2000e-2(h) which provides:

"(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, . . ."

STATEMENT OF THE CASE

A. Course of Proceedings in the Title VII Litigation Currently Pending Before This Court.

The Fifth Circuit on April 11, 1975, in *Equal Employment Opportunity Commission v. International Longshoremen's Association, et al.*, 511 F.2d 273 (5th Cir.

1975) issued its mandate requiring the merger of segregated local unions chartered by the Longshoremen's Association. In compliance with this mandate, the United States District Court issued an interim order permanently enjoining the International Longshoremen's Association, the International Longshoremen's Association South Atlantic and Gulf Coast District and various locals from maintaining segregated locals. (This interim order filed August 26, 1982 is attached hereto as Appendix C, infra). This interim order approved an earlier order issued by Master White (Appendix D. infra) which ordered the merger of the four Galveston Locals 1576, 307, 329 and 851. The interim order issued by Master White required the locals to recognize the years of seniority credited by each of the other three locals to its respective members.

After the Locals were ordered to merge on August 26, 1982, the International Longshoremen's Association District submitted a memorandum in support of its recommendations regarding the merger and the Locals filed objections and responses. The International Longshoremen's Association District recommended the merger of the list pursuant to a ratio-rank approach. The District Court approved the recommendation of the International Longshoremen's Association District regarding the ratio-rank approach for the merger of the Locals on March 22, 1983. Local 851, one of the defendant Locals, gave Notice of Appeal to the Fifth Circuit Court of Appeals of the District Court order relating to the ratio-rank formulation for merging the seniority lists. (Appendix B, infra).

On October 17, 1984, the District Court order relating to the merger of the lists using the ratio-rank formulation was affirmed by the Fifth Circuit Court of Appeals in a per curiam opinion. (Appendix A, infra).

B. Relevant Facts Concerning the Underlying Merger Order.

The United States[1] in 1969 filed an action naming the International Longshoremen's Association, the South Atlantic and Gulf Coast District of the Association and 37 local unions as defendants. In a complaint charging defendants with a violation of the civil rights of the various employees of the local unions (hereinafter "locals") in derogation of rights secured by Title VII of the Civil Rights Act of 1964, the United States charged that various practices including the maintenance of segregated locals and hiring halls perpetuated past discrimination. With the advent of *Brown v. Board of Education,* 347 U.S. 483 (1954) and several other Supreme Court decisions eroding the accepted existence of racially separate facilities, the maintenance of segregated locals in this instance had to fall. Consequently, the Fifth Circuit ordered the merger of the locals in *Equal Employment Opportunity Commission v. International Longshoremen's Association,* 511 F.2d 273 (5th Circuit 1975).

Pursuant to this merger order, the parties began negotiations concerning the method to be used to merge the seniority lists of the four Galveston locals. The International Longshoremen's Association District submitted a proposal that recommended that an equitable merger could be reached if the ratio-rank principle were applied to the merger. This principle recognizes the amount or percentage of employees each group brings to the merger,

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1. This suit was originally brought by the Attorney General. Effective as of March, 1974, this jurisdiction was transferred to the Equal Employment Opportunity Commission by 42 U.S.C. § 2000e-6(c). Section 2000e-6(d) continued without abatement all suits brought by the Attorney General by substituting the Commission as a party.

and integrates the list based upon the ratio. For instance if group A consists of 200 persons and list B consists of 100, the ratio is 2 to 1. Therefore the first three names on the list would consist of two names from group A and one name from group B. As among the three employees, length of service may be used to determine which employee gets each of the first three places. The problem in this instance narrows and centers around what constitutes length of service in each of the four locals.

The four locals are 1576, 307, 329 and 851. The racial composition is 1576 (Mexican), 307 (Anglo), 851 and 329 (Black) and the ratio of employees that each is bringing to the merger is 34%, 35%, 21% and 9%.

Prior to the merger each local had allocated varying amounts of man hours that would constitute a year's seniority. Local 1576, (the banana local) specialized in the loading and unloading of green fruit and had very lax standards for computing seniority because there was not that much work. This local has been in existence since 1937 but has only been viable since 1968. Prior to 1968, any employee who worked one boat per year was given seniority. In 1968, the requirement was increased to twenty boats per year and in 1972, a standard of 300 hours per year was adopted.

The other three locals had more stringent requirements for seniority credit, but there was some variation in those standards. Locals 307 and 851 required 500 hours prior to 1951, and 700 hours per year thereafter. Local 329 has always required 400 hours per year.

Local 1576 has always maintained that its seniority should be fully recognized, while the other locals asserted

that full recognition would place men with less experience before men with continuous employment in the industry on the seniority list. The seniority lists in this case is not only important in determining post-employment benefits but is important daily in assessing priorities in hiring.

The ratio-rank formula would place the employees in 1576 on equal footing with other longshoremen whose local adhered to more stringent standards in assessing seniority. Objections were filed by the Locals involved in this case to the use of the ratio-rank approach, but the District Court and Court of Appeals upheld this formula as initially submitted by the International Longshoremen's Association District. It is suggested here that another method, either the follow the work approach, or length of service formula would be a more equitable resolution of the problem presented by the merging of the seniority lists.

EXISTENCE OF JURISDICTION

The four unions to the merger order here were Locals 1576, 307, 851 and 329, all operating out of the port of Galveston. The District Court on March 22, 1983 ordered the Locals to use a ratio-rank formulation for determining the order of names on the merged list.

The Court of Appeals for the Fifth Circuit in affirming the judgment rendered by the District Court failed to equitably assess the loss of vested seniority rights by workers displaced by persons with less seniority and has so far departed from the accepted and usual course of judicial proceedings as to call for this Court's power of supervision. The decision also conflicts with *Firefighters Local Union v. Carl W. Stotts,* 52 U.S.L.W. 4757 decided by this Court on June 12, 1984.

SUBSTANTIALITY OF QUESTIONS PRESENTED

Opposition to the merger of Galveston Locals 1576, 307, 851 and 329 would be futile and it is only reasonable that this remaining vestige of discrimination in the form of segregated locals be removed from the waterfront. Consequently, the merger of the previously segregated unions is not opposed. The challenge to the Court's judgment in this instance is directed to the divestment of seniority rights that inured to the disadvantage of the petitioners through an application by the Court of the ratio-rank system to facilitate the merger of union seniority lists.

Seniority is usually defined as the measure of time with an employer, plant, department, or job. The system usually contains rules of when and how to apply the specific seniority date. *Seniority Systems in The Post Teamster Era,* LAB. L.J. 30: 545-58 (1979). Seniority within the context of a discrimination suit pursuant to Title VII usually focused on the loss of seniority when workers transferred between departments within the same company or upon merger of one subsidiary with another. *Teamsters v. United States,* 431 U.S. 324 (1977); *United States v. East Texas Motor Freight Systems,* 564 F.2d 179 (5th Cir. 1977); *Beiski v. Eastern Automobile Forwarding Company,* 354 F.2d 414 (3rd Cir. 1965). Seniority in the context of those cases was important in assessing eligibility for post-employment benefits. Unlike those cases, seniority within the context of this case also in addition to determining eligibility for post-employment benefits, determines the order of hiring in each port. In order to be hired for any job in the Galveston port, all of the employees who desire work on that day, report at the union hall at the designated starting time. The persons who report

for work are then placed in classifications based solely on seniority and the hiring is done with preference being given in order of seniority classification.

This hiring system is important in that persons who have provided lengthy, continuous service in the industry are rewarded by being assured of work. This system is also valuable to the industry in that it assures that the jobs which are extremely hazardous in many instances are handled by experienced workers. Therefore, hiring the workers in a preference order based on seniority enhances the safety to the workers by assuring the presence of experienced workers on any given project.

This Court in *Firefighters Local Union v. Stotts,* 52 U.S.L.W. 476 (1984) emphasized the importance of seniority rights and the benefit that the senior employee in the work environment is entitled to. The case held that a contractual seniority system must control when there is a conflict with a consent decree obtained under Title VII of the Civil Rights Act.

The plaintiffs in that case were two blacks, one holding a position as Firefighter Captain and the other a private. The complaint charged the Memphis Fire Department and other city officials of engaging in a pattern or practice of discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as well as 42 U.S.C. § 1981 and 1983. This action resulted in the parties approval of a consent decree in 1980. The purpose of the decree was to remedy hiring and promotion policies "of the department with respect to Blacks". *Stotts* at 4768. This 1980 decree was similar to an earlier decree entered in 1974 which settled a case brought against the city by the United States. Neither

decree made any provisions regarding layoffs or reduction in rank, and neither awarded competitive seniority. Thereafter, the city announced that budget deficits would require a reduction of non-essential personnel in city government. Layoffs were to be based on "last hired, first fired rule" under which city wide seniority, was to be determined by each employee's length of continuous service from the latest date of permanent employment. After the city announced this reduction, on May 4, the District Court at respondent's request entered a temporary restraining order forbidding the layoff of any Black employee. In response to this injunction the city developed a modified layoff plan in attempting to comply with the consent decree. In certain instances, to comply with the injunction, non-minority employees with more seniority than minority employees were laid off or demoted. The Court of Appeals upheld this action under general contract principles that the City had agreed to increase the number of Blacks employed and that the layoffs as proposed would breach the contract.

The issue of the heart of the case was "whether the District Court exceeded its power in entering an injunction requiring white employees to be laid off, when the otherwise applicable seniority system would have called for the layoff of Black employees with less seniority." *Stotts* at 4770. In ruling that the District Court had exceeded its powers this Court reasoned that there was no mention of layoffs or any expressed desire to do away with the existing system of seniority in that consent decree. The decree which had the stated purpose of remedying past hiring and promotion practices did not include the displacement of white employees with seniority over blacks. *Stotts* at 4770. Furthermore the relief pro-

vided pursuant to the decree could not exceed the remedies provided by Title VII of the 1964 Civil Rights Act. Section 703(h) protects bona fide seniority systems by providing that: "it is not an unlawful employment practice to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority system, provided such differences are not the result of an intention to discriminate on the basis of race." In substance this Court recognized that accrued seniority rights pursuant to a bona fide seniority system are protected by Title VII absent an intent to discriminate, and that any relief provided under the act does not extend to bumping employees previously occupying jobs. *Franks v. Bowman Transportation Co.*, 424 U.S. 947 (1976); *Teamsters v. United States*, 431 U.S. 324 (1977); *Patterson v. American Tobacco Co.*, 535 F.2d 257, 267 (4th Cir. 1976) cert. denied, 429 U.S. 920 (1976); *Local 189, United Papermakers and Paperworkers v. United States*, 416 F.2d 980, 988 (5th Cir. 1969); cert. denied, 397 U.S. 919 (1970).

Stotts provides some guidance for the Court here in determining whether the lower court's attempt to comply with the interim order issued March 22, 1983, requiring merger should be construed to allow divestment of petitioners' seniority rights. The interlocutory decree (Appendix E, infra), required the defendants to merge in order to achieve full compliance with Title VII of the Civil Rights Act of 1964. However, the District Court in its interlocutory decree and supporting memorandum (Appendix F) realized that seniority would present a problem in forming an equitable decree. The reason for this is that the basic hours that the longshoremen have

been required to work to become entitled to a year's seniority has differed greatly from one local to another. Also stressed in the supporting memorandum was that in formulating an equitable decree, the Court had to be mindful of protecting the rights of those who have spent their lives on the waterfront, as compared to those who only work the waterfront as a sideline. This recognition by the Court in entering its merger order would seem to indicate that although relief under Title VII was warranted, this relief did not extend to violating the seniority rights of those longshoremen who in the Court's own words, "had spent their lives on the waterfront." This rationale is also in accordance with *Stotts* in recognizing that compliance with Title VII should not extend to disrupting seniority rights. Title VII was enacted pursuant to constitutional guarantees found in the 5th and 14th Amendment which embody each individual's right to not be deprived of life, liberty, or property without due process of law. Consequently, Title VII as the statutory enactment of the Constitutional mandate that persons be secure in their life, liberty, or property does not extend to robbing employees of vested property rights in the form of employment. (*See: Tomanio v. Board of Regents of University of State of New York,* 603 F.2d 255 (2nd Cir. 1979), reversed on other grounds 446 U.S. 478 (1980), holding that a person's interest in the continued practice of their chosen profession is a "property right" within the protection of the Fourteenth Amendment and may also be "liberty" thereunder).

Therefore the petitioners here who stand to lose seniority rights in the longshoremen industry stand to lose more than post-employment benefits, but their rights to continued daily employment. Under the authority of *Stotts,*

it cannot be reasonably asserted that the relief ordered in compliance with Title VII requiring merger extends to the formulation of a merger plan that divests seniority rights.

a. Formulation of an Equitable Merger Plan.

The Court below affirmed a merger formula using a ratio-rank formula to protect the rights of the members of the four locals. Under this system the percentage of employees brought to a merger is determinative of the order of names on the merged list. Here, Local 307 will be bringing 35%; Local 329 will bring 9%; Local 851 will bring 21%; and 1576 will bring 34%. Merger of the list in this manner with full recognition of the seniority on the various lists will result in many 1576 employees placement above 851 and 329 employees who are bringing a smaller percentage of employees to the merger. Merging the list in this manner would be equitable if the basis of accumulating seniority in the four locals had been equal, however, the methods have vastly differed.

Local 1576 had the most lenient standards of computing the number of hours worked that would constitute a year's seniority. Prior to 1968 any employee in that local who worked one boat per year was given credit for one year's seniority. This was later increased to twenty boats per year and in 1972 a standard of 300 hours per year was adopted. Local 329 always required 400 hours per year and Locals 307 and 851 required 500 hours to 1951 and 700 per year thereafter.

These four locals were divided along racial lines. Local 1576 was the Mexican-American Local and pursuant to its charter handled only green fruit. Local 329 was

a "deep sea" local, (a deep sea local handles a wide range of cargo) that only served four stevedoring companies. Locals 307 and 851 were Anglo and Black respectively and split the remaining work 50-50. In light of this examination of the facts it is apparent that a merger of the seniority lists in a manner that is equitable is at best difficult.

Petitioners, members of Local 851 assert that instead of rank ratio formula proposed, which results in a windfall to employees of Local 1576 whose full seniority rights will be recognized, a follow the work principle should be employed.

Under the follow the work principle, when there is a merger, the workers may be given the opportunity to follow the work they previously performed with the seniority rights to such work protected. The rationale behind the follow the work principle is that it prevents the consolidation from resulting in windfalls to some employees at the expense of other employees. There is some problem in the application of this principle. One question is whether it is better to merge the list or to continue them as separate lists. If the work that each group brings to the consolidation can remain distinct and separate, separate seniority lists may be the easiest solution. *See:* Kennedy, "Merging Seniority Lists", *Labor Arbitration and Industrial Change,* 1-34 (BNS Incorporated, 1963). However, the operation of four lists would seem to do violence to the idea of merger. It would be possible under this principle to integrate the list on a ratio representing the amount of work brought to the consolidation by each group. In some cases it is quite difficult to determine the percentage of work in the consolidation that each group brings to it. In this instance,

in light of the past work performed by each of the four locals both Locals 1576 and 329 are bringing a smaller percentage of the work to the merger than are Locals 307 and 851. Applying the follow the work principle the seniority list could be merged so that, for instance, if the first four names are to be merged, they should be merged with employees from 851 and 307 listed first and second. Third and fourth place would then go to 329 in light of its past limitation to only four stevedoring companies and then to 1576 due to its past work and seniority requirements.

A second alternative for the merger of the list would be a length of service principle. Under this principle, a combined seniority list is prepared by placing employees on the new list in the order of their length of service regardless of which group the employees work for prior to the merger. All employees are thus treated as if they had always been employed by the same company. *How Arbitration Works,* Third Edition, Frank and Edna Elkouri, 564-67. Either of the above principles would seem to be more equitable than the ratio-rank system upheld below. The application of either would put an end to the conflict among the employees and provide a solution with a rationale basis that does not do violence to the rights of any group.

CONCLUSION

The courts below failed to adequately protect the rights of workers who have continually worked and been employed as longshoremen. While efforts to comply with the interlocutory decree entered in this Title VII case require merger, the efforts at compliance should not re-

quire a merger that deplaces senior employees who have vested property and liberty rights at stake. Under the *Stotts* case Title VII relief does not extend to disrupting seniority systems that were in all respects bona fide and not formulated with any discriminatory or illegal purpose. The merger system using a ratio-rank approach deprives the more experienced workers of seniority rights that not only determine their right to post-employment benefits but their right to daily employment. Consequently, a fairer and more equitable approach under either the follow-the-work principle or length-of-service principle would serve both the interest of assuring a stoppage of discrimination as prohibited by Title VII and the workers interest in vested seniority rights. This Petition for Certiorari should therefore be granted.

Respectfully submitted,

WASHINGTON & RANDLE

By: _____

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Attorneys for Petitioners

CERTIFICATE OF SERVICE

By my signature below, I do hereby certify that on the 17th day of December, 1984, a true and correct copy of the foregoing Petition for Writ of Ceritorari was furnished by United States mail to the following:

(1) Mr. James R. Watson, Jr.,
Bray & Watson
1445 North Loop West, Suite 800
Houston, Texas 77008

(2) Ms. Elaine Bloomfield
Equal Employment Opportunity Commission
2401 E. Street, N. W.
Washington, D.C. 20506

(3) Mr. John Thoma
Cotton Exchange Building
Galveston, Texas 77550

(4) Mr. Sidney Ravkind
Mandell & Wright
21st Floor, 806 Main Street
Houston, Texas 77002

(5) Mr. Robert M. Moore
Robert M. Moore & Associates
7511 Broadway
Galveston, Texas 77551

LARRY Q. EVANS

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,
Plaintiff-Appellee,

v.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, ET AL.,
Defendants

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION LOCALS 329 and
851, AFL-CIO, ET AL.,
Defendants-Appellants.

Appeals from the United States District Court for the
Southern District of Texas

(October 17, 1984)

Before CLARK, Chief Judge, JOHNSON and WILLIAMS, Circuit Judges.

PER CURIAM:*

Preserving work expectancies through use of the ratio-rank formulation for merger of seniority lists of existing

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule the court has determined that this opinion should not be published.

unions into new Local 20 at the Port of Galveston was a fair resolution of the equitable issues presented to the district court. This remedy was within the ambit of the district court's discretion. The judgment appeals from it

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CIVIL ACTION NUMBER 69-B-3(G)
This pertains to the Port of Galveston only

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Plaintiff,

v.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, an unincorporated
association, et al
Defendant

(Filed March 30, 1983)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that I.L.A. LOCAL 851, one of the defendants in the above referenced cause, hereby appeals to the United States Court of Appeals for the 5th Circuit from the portion of the Order entered on the 22nd day of March, 1983, specifically and only to paragraphs, *Port of Galveston,* paragraphs a, b, (1) and (2) on pages 19, 20, and 21, all relating to the findings of the Court and the criteria, method and manner of

merging the seniority lists of all four of the deep water locals in Galveston.

Respectfully submitted,

ROBERT M. MOORE &
ASSOCIATES

By: ROBERT M. MOORE
Robert M. Moore

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Attorneys for Defendant,
I.L.A. LOCAL 851

CERTIFICATE OF SERVICE

I do hereby certify that on this the _____ day of March, 1983, a true and correct copy of the foregoing NOTICE OF APPEAL was sent by United States mail, correctly addressed and postage prepaid to:

1. Mr. James R. Watson, Jr., Bray & Watson, 1445 North Loop West, Suite 800, Houston, Texas 77008, Attorney for the South Atlantic-Gulf Coast District, I.L.A.
2. Ms. Elaine Bloomfield, Equal Employment Opportunity Commission, 2401 E Street, N.W. Washington, D.C. 20506. Attorney for Plaintiff.
3. Mr. Leonard Cruse, Martin, Carmona, Cruse & Micks, P. O. Box 1570, Galveston, Texas 77553, Attorney for I.L.A. Local 329.
4. Mr. James Patrick Cooney, Royston, Rayzor, Vickery & Williams, 2200 Texas Commerce Tower, Houston, Texas 77002, Attorney for West Gulf Maritime Association Intervenors.
5. Mr. Sidney Ravkind, Mandell & Wright, Twenty-First Floor, 608 Main Street, Houston, Texas 77002, Attorneys for I.L.A. Local 307.
6. Mr. Robert L. Penrice, 2000 Professional Building, Loop 197, Texas City, Texas 77590, Attorney for I.L.A. Local 1576.

PORTIONS OF DISTRCIT COURT ORDER

* * *

recommendation, involves an election timetable that is not workable in view of the April 1 deadline for merger. Therefore, the Court hereby approves and adopts Local 1818's proposal that the present officers of both existing locals shall remain in office during the interim period with shared responsibility for those offices.

g. The election of permanent officers shall be as provided in the approved Constitution and Bylaws.

h. The assets and liabilities of both locals shall be transferred to and assumed by the new local.

i. The Merger Committee's agreement regarding the service charge fee and dues has been recommended by the District. It is hereby approved and adopted.

5. *Port of Galveston*

a. The port of Galveston has presented special problems and vigorously disputed merger issues since the inception of his lawsuit. In this port, four deep sea locals are merging. The white local, Local 307, has 35% of the total number of the deep sea longshoremen in Galveston and currently performs 38% of the work in that port.[4] Local 329, one of two black locals, has 9% of the longshoremen and performs 6% of the work. Local 851, the other black local, has 21% of the longshoremen and performs 30% of the work. Local 1576, a Mexican-American local, has 34% of the total number of longshoremen and has performed 26% of the longshoring work in that port, over the last three years. Local 1576, the so-called "Banana local," has a green-fruit charter

and presently performs only that kind of work. It is undisputed that at this time, the green-fruit work in this port is increasing annually, while all other longshoring work is decreasing. This situation is markedly different than that which existed earlier in this case. A special hearing was held in Galveston on January 28, 1983, to resolve the hiring hall question and for argument on other merger issues.

b. The Merger Committee has not been able to agree on a method for merging the four seniority rosters. The District, in its December 6, 1982, Recommended Plan of Merger for the Port of Galveston, recommended a ratio-rank approach. This formula accepts every longshoreman's seniority in his own former local as valid. It precludes a windfall or a loss to any group. Given the unique relationship and history among the various locals in Galveston, and the fact that Local 1576 is actually "bringing" work to the merger that was not heretofore available to members of other locals, the Court finds that the application of the ratio-rank method would effect the fairest merger of seniority lists in Galveston.

Therefore, the Galveston Merger Committee, with the assistance of the District, is ordered to merge the seniority lists of Locals 307, 329, 851 and 1576 in the following manner:

(1) *Step 1:* Combine the seniority lists of the two black locals, Locals 329 and 851, using a straight length of service procedure. Decide all ties by lot. This will essentially equalize the black and white general cargo deep sea locals, both in terms of size and work performed.

(2) *Step 2:* Merge the three resulting seniority lists, applying the ratio-rank method. Ties within an existing

union in rank should be decided by lot. Ties among longshoremen from different existing locals in forming the composite merged list should be decided by length of service first, then by lot. There is to be no "reclassification" of any local's seniority list. No local's seniority is to be discredited because of varying standards.

c. The hiring hall question has previously been resolved by this Court. Local 851's hiring hall shall be used by the new merged local.

d. The written hiring hall procedures as proposed by the Merger Committee and recommended by the District, shall be reformed as necessary to conform to the merged seniority roster compiled pursuant to subparagraph b above, and to give full credit for the seniority each longshoreman validly earned in his existing local. A copy of this redrafted hiring hall procedure will be filed with the Court by the District no later than March 28, 1983, along with the District's recommendation for approval.

e. The proposed Constitution and Bylaws for the new local, as amended pursuant to the Watson letter to the Court of February 4, 1983, and the Merger Committee letter to the District of February 21, 1983, are hereby approved and adopted.

Objections have been filed by individual locals as to Bylaw provisions allowing retirees to vote and regarding the amount of pay for officers of the new local. The Court believes that these are internal organizational matters best decided by the Merger Committee, not a federal court. They do not directly bear upon the purpose of the merger. Therefore, the Court will not second-guess the Merger Committee on those questions.

f. The Galveston Merger Committee elected interim officers from the Merger Committee membership. An objection to this election has been made by locals 851 and 329. The District recommended approval of the elected officers and their amount of pay. The Court finds nothing in the Galveston Merger Committee's provision for interim government which violates either the letter or spirit of the August 26 Order or affects the goals of the merger. The Merger committee's proposals are hereby approved and adopted.

g. The Merger Committee's agreement that the election of permanent officers will be in accordance with the new Constitution and Bylaws is approved and adopted. Nomination and election of permanent officers shall take place in November and December of 1983 respectively.

h. The Merger Committee agreed on the transfer of assets and liabilities to the new local. Their agreement is approved and adopted.

i. The Merger Committee's agreement as to a 5% service charge fee and dues as set forth in the new Constitution and Bylaws is approved and adopted.

j. Other merger issues pertaining to burial plans, insurance, and credit union membership are to be resolved by the Merger Committee, or after April 1 by the interim officers, and executive board, in a nondiscriminatory manner.

6. *Port of Houston—Deep Sea Locals*

a. Two large deep sea locals are being merged in the Port of Houston. Each has just over 1,000 classified long-

shoremen. They have been splitting the work of this port 50-50.

b. The most serious controversy in this port has revolved around the seniority roster. The two Masters appointed for the Houston Deep Sea Locals, after five years of proceedings, compiled an accurate seniority list for each local through fiscal year 1979. These component lists were certified to the Court as accurate, both as to the listing of classified longshoremen and the correct credited years of seniority for past service rendered by each longshoreman according to the applicable rules and standards of his local. The Masters' component seniority lists are hereby adopted as final by this Court. Both locals have subsequently updated their component lists through fiscal year 1982.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 69-B-3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, et al., Defendants

(Filed August 26, 1982)

INTERIM ORDER

In compliance with the Fifth Circuit Court of Appeal's mandate of April 11, 1975, 511 F.2d 273, *cert. denied,* 423 U.S. 994 (1975) the Defendants herein—the International Longshoremen's Association ("the International"), the I.L.A. South Atlantic and Gulf Coast District ("the District"), and I.L.A. Locals 1367, 1368, 1758, 1763, 1723, 1818, 307, 329, 851, 1576, 636, 991, 1406, 872, 1273, 1330, 1331, 1525, 1581, 325, 1306, 1610, 341, 814, 1029, 1175, 440, 1224, 1225, 1280 and 1281—are hereby permanently enjoined and restrained from discriminating against persons in employment opportunities by the maintenance of separate local unions and hiring halls in the ports of Texas on the basis of race, color, or ethnic background, and from engaging in any act or practice which has the purpose or effect of discriminating against individuals on account of their race, color, or ethnic background.

Each Defendant Local is hereby declared merged with its sister Local(s) in the same port as follows:

Beaumont	—	Locals 325, 1306, and 1610
Brownsville	—	Locals 1367 and 1368
Corpus Christi	—	Locals 1224, 1225, 1280 and 1281
Freeport	—	Locals 1723 and 1818
Galveston	—	Locals 307, 329, 851 and 1576
Houston		
Deep Sea	—	Locals 872 and 1273
Warehouse	—	Locals 1330, 1331, 1525 and 1581
Orange	—	Locals 341 and 814
Port Arthur	—	Locals 1029 and 1175
Port Lavaca	—	Locals 1758 and 1763
Texas City	—	Locals 636 and 991

Defendant Local 440 in Port Arthur, Texas, the only warehouse local in that port, is not being ordered to merge with the two deep sea locals in Port Arthur, but will remain in the case for reporting and monitoring purposes. The Court is advised that Local 440 is an eqaul opportunity union and does not discriminate on the basis of race or color.

Local 1406 in Texas City, Texas, is reportedly inactive. It will be dismissed as a party to the suit as soon as the International certifies that its charter has been cancelled and its assets liquidated.

II.

The Masters are hereby relieved of further duties under the Orders of Reference dated March 11, 1977, and August 17, 1979. They will remain available to assist

the Court, the Plaintiff, or the I.L.A. District in an advisory capacity.

The prior work of the Masters has been most valuable to the Court and the Locals. The Masters' recommendations have been reviewed and are hereby approved and adopted as orders of this Court, including, but not necessarily limited to, the following matters:

A. *Port of Beaumont—Locals 325, 1306 and 1610:*

Dean White's interim order of January 22, 1981, is adopted as an Order of this Court. The Master's findings of fact, conclusions of law, and recommendations, embodied in a draft transmitted to this Court on September 24, 1981, are approved and adopted by the Court.

B. *Port of Brownsville—Locals 1367 and 1368:*

The Master's approval of the seniority lists and recommendation of the use of the gang system are approved and adopted by the Court as its Order.

C. *Port of Corpus Christi:*

1. *Deep Sea Locals 1224 and 1225:*

The Master's interim order of February 23, 1981, is adopted as the Court's Order.

2. *Warehouse Locals 1280 and 1281:*

No interim orders, findings, or recommendations appear to have been entered.

D. *Port of Freeport—Locals 1723 and 1818:*

No interim orders appear to have been entered.

E. *Port of Galveston—Locals 307, 329, 851 and 1576:*

The interim order made by Master White on March 12, 1981, in respect to a working merger of the Galveston Locals (Locals 307, 329, 851 and 1576) is hereby approved and ratified by the Court and shall be put into full effect by each of the Galveston Locals on September 1, 1982. Each Galveston Local from September 1, 1982, and until further order of the Court is to:

(a) Make information about work opportunities through its hiring hall available to members of the other three named locals as freely and as fully as it does to its own members;

(b) Give to the members of the other three locals access to its hiring hall and the privileges thereof as freely and as fully as it does to its own members;

(c) Accept for hiring through its hall the years of seniority credited by each of the other three locals to their respective members;

(d) Cause its foreman to hire members of the other locals when grouped with its own members according to seniority and without regard to race, religion, ethnic background or local affiliation.

F. *Port of Houston*

1. *Deep Sea Locals 872 and 1273:*

Masters Jefferson and White are directed to certify to the Court by September 3, 1982, the results of all proceedings before them pertaining to the senority questions at Locals 872 and 1273, including the certification of component senority lists and any and all agreements reached by these two locals. Past senority credits as de-

termined during such proceeding before the Masters are adopted as final by this Court.

2. *Warehouse Locals 1330, 1331, 1525 and 1581:*

There appear to be no interim orders regarding these Locals. The August 17, 1979, order of reference establishes, and by letter dated October 9, 1980, the Master further recommended, that all four warehouse locals be merged into one new local. This Court so orders.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CIVIL ACTION NO. 69-B-3

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,
Plaintiff

v.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, ET AL

INTERIM ORDER

Pursuant to the authority vested in me by the Order of Reference entered herein on August 17, 1979, as revised by the Court on February 1, 1980, reported hearings were held in Galveston, Texas on June 17, 1980 and September 18, 1980. Unreported hearings and conferences had previously been held and a further unreported hearing was held on March 12, 1981. At those hearings and conferences facts were presented and arguments were made. The Master has also entered orders herein for the performance of certain actions, one on July 21, 1980 and another on September 26, 1980. On the basis of the facts presented and the arguments made at said hearings and conferences, and the information presumed to have been developed in complying with said orders, it is found and ordered, pending the issuance of a final order herein, that I.L.A. Locals 1576, 307, 329 and 851 proceed as follows:

1. It is found that Longshoremen working out of I.L.A. Local 329 have long been at a disadvantage, when compared to men working out of I.L.A. Locals 1576, 307 and 851, with respect to work opportunities. There is simply less work per man available through this Local. Judge Garza and the Master have thus far respected the wishes of the Galveston Locals that they not be formally merged until the Houston Deep Sea Locals are merged. This makes it imperative that interim relief be given to men working out of Local 329.

* * *

3. Finally, it is found that the procedure hereinafter ordered will substantially eliminate the work opportunity injustice now experienced by members of I.L.A. Local 329 without encroaching on the announced policy of merging all Texas Locals at approximately the same time.

4. Each of I.L.A. Locals 1576, 307, 329 and 851 are, therefore, hereby ordered, effective April 1, 1981, to:

a. Make information about work opportunities through its hiring hall available to members of the other three named Locals as freely and as fully as it does to its own members.

b. Give to the members of the other three Locals access to its hiring hall and the privileges thereof as freely and as fully as it does to its own members.

c. To accept for hiring through its hall the years of seniority credited by each of the other three locals to their respective members.

d. Cause its foremen to hire members of the other Locals when grouped with its own members according to seniority and without regard to race, religion, ethnic background or Local affiliation.

The Committee constituted by the order of the Master dated July 21, 1980, plus two members from I.L.A. Local 1576 to be named by its President is hereby charged with the responsibility of implementing this Order.

Entered this the 12th day of March 1981.

/s/ A. A. WHITE
Master

APPENDIX E

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CIVIL ACTION NO. 69-B-3

UNITED STATES OF AMERICA,
Plaintiff

v.

INTERNATIONAL LONGSHORMEN'S ASSOCIATION, an unincorporated association; SOUTH ATLANTIC AND GULF COAST DISTRICT, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, an unincorporated association; and LOCALS 1367, 1368 and 1372, ILA, Brownsville, Texas; LOCALS 872, 1231, 1271, 1273, 1330, 1331, 1525, and 1581, ILA, Houston, Texas; LOCALS 325, 1306 and 1601, ILA Beaumont, Texas; LOCALS 307, 329, 851 and 1576, ILA, Galveston, Texas; LOCALS 1224, 1225, 1241, 1245, 1280 and 1281, ILA, Corpus Christi, Texas; LOCALS 1723 and 1818, ILA, Freeport, Texas; LOCALS 636, 991, 1405 and 1406, ILA, Texas City, Texas; LOCALS 440, 1029, and 1175, ILA, Port Arthur, Texas; LOCALS 341 and 814, ILA, Orange, Texas; and LOCALS 1758, and 1763, ILA, Port Lavaca, Texas, uincorporated associations,
Defendants

(Filed October 1, 1973)

INTERLOCUTORY DECREE

Pursuant to the "Memorandum' of this Court, which has been entered herein and constitutes the Findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED and DECREED that said defendants are not required to merge in order to achieve full compliance with Title VII of the Civil Rights Act of 1964 and therefore such relief is hereby denied; and it is further ORDERED, ADJUDGED and DECREED that any violation of Title VII of the Civil Rights Act of 1964 can be fully corrected by the abolishment of separate hiring halls and the establishment of a common hiring hall on a port by port basis for each defendant local union which does the same kind of work, as herein set forth, within a period of ninety (90) days from a final Order entered herein, as follows:

I.

DEFENDANT LOCAL UNIONS WHICH MUST MERGE HIRING HALLS WITH EACH OTHER

Port	*Locals to Merge Hiring Halls*
Beaumont	325, 1306 and 1610
Brownsville	1367, 1368 and 1372
Corpus Christi	1224 and 1225
Corpus Christi	1280 and 1281
Freeport	1723 and 1818
Galveston	307, 329, 851 and 1576
Houston	872 and 1273
Houston	1330 and 1331
Houston	1525 and 1581
Orange	341 and 814
Port Arthur	1029 and 1175
Port Lavaca	1758 and 1763
Texas City	636 and 991

II.

COMMON SENIORITY CLASSIFICATIONS

During the ninety (90) days period heretofore described, the defendant local unions that are required to operate a common hiring hall shall adopt a common seniority classification and hiring hall plan and prepare a list of qualified, regular gang foremen on a port by port basis in compliance with Title VII of the Civil Rights Act of 1964 for approval by this Court, using the following standards:

1. No active longshoreman's classification shall be reduced unless it is demonstrated that he has not worked a sufficient number of years to warrant his present classification, taking into consideration the seniority system of the local and/or locals with which his local is being required to merge hiring halls, except that appropriate allowances shall be made for the prior effect of the division of the work.

2. Presently classified longshoremen have the right to request, upon a showing of good cause, that they be upgraded, which request shall be reviewed as hereinafter provided.

3. Gang members shall be referred to work on the basis of their seniority classification; that is, longshoremen with a higher seniority classification shall be offered job opportunities before longshoremen with a lower seniority classification, and not on the basis of race.

4. Gangs shall not be selected or worked on the basis of race.

5. When a gang foreman selects members of his gang, he shall make such selections offering job opportunities

to longshoremen with the highest seniority classification and qualifications before offering such job opportunities to longshoremen with a lower seniority classification and qualifications. Qualifications shall mean the ability to perform the job, and if a longshoreman has regularly worked the job in the past he shall be deemed qualified to work the job. A rebuttable presumption of good faith on the part of the gang foreman in making job assignments shall exist.

6. All persons who were regular, active gang foremen as of January 20, 1969 or who have been approved as a regular, active gang foreman since that date shall be eligible to be included on the list of qualified, regular gang foreman, who shall be selected for such list by the Review Committee, as hereinafter provided, on a non-discriminatory basis.

7. Gang foremen shall be selected to work on the basis of their gang's accumulated earnings on a day to day basis, as indicated by a list which shall be prepared and maintained daily.

The gang foreman with the least earnings for his gang shall be selected first to carry a gang.

Nothing in the preceding paragraph shall prejudice any gang foreman from being referred to work, other than in the capacity of gang foreman, in line with his seniority classification.

8. Each Seniority System in each Port shall contain a non-discriminatory provision relating to the requirements that must be met in order to gain future (or additional) seniority or to maintain existing seniority classifications. Each longshoreman shall be reclassified on an annual

basis within sixty (60) days following receipt of the work records from the ILA Welfare, Vacation and Pension Records for the preceding year, if he is entitled to be reclassified. The Review Committee, hereinafter provided for, shall constitute the committee to make such annual reclassifications.

9. One representative from each defendant local union which is required under this Order to merge hiring halls shall constitute a Review Committee to hear any grievance of any individual longshoreman that he has been improperly classified or that he has been improperly referred to work in violation of the common hiring hall plan and/or the final Order of this Court.

10. All defendant local unions shall file with the Clerk of this Court a full and complete report showing the common Seniority System and Hiring Hall Plan adopted by them pursuant to this Order and disclose the classification of each individual longshoreman by name. The plaintiff herein, or any local union and any individual longshoreman is granted leave to file in this Court any objections to the common Seniority System and Hiring Hall Plan within sixty (60) days after the filing of such report which related to him.

III.

COMMON SENIORITY SYSTEM AND HIRING HALL PLAN WHERE AT LEAST ONE LOCAL IN THE PORT DOING THE SAME KIND OF WORK DOES NOT HAVE AN EXISTING SENIORITY SYSTEM AND HIRING HALL PLAN

Where at least one local union in a port which has been ordered by this Court to merge hiring halls does not

presently have a seniority classification system, the following standards shall apply:

1. All longshoremen who have been classified by their local shall use as his seniority classification the classification which has been assigned to him under his present local's current seniority system.

2. The Review Committee shall devise a seniority plan for the common hiring hall which shall follow the existing plan or plans in the Port as near as possible and which shall not discriminate against any person or on account of race or color.

3. All longshoremen who have not been classified by their local union shall then be classified by the Review Committee under the newly devised seniority system for the common hiring hall.

4. No person's classification shall be reduced unless it is demonstrated that he has not worked a sufficient number of years to warrant his present classification, taking into consideration the seniority system of the local and/or locals with which his local is being required to merge hiring halls, except that appropriate allowances shall be made for the prior effect of the division of the work.

5. Presently classified longshoremen, including those longshoremen classified under paragraph three above, shall have the right to request, upon showing of good cause, that they be upgraded, which request shall be reviewed as hereinafter provided.

6. Gang members shall be referred to work on the basis of their seniority classification; that is, longshoremen with a higher seniority classification shall be offered job oppor-

tunities before longshoremen with a lower seniority classification, and not on the basis of race.

7. Gangs shall not be selected or worked on the basis of race.

8. When a gang foreman selects members of his gang, he shall make such selections offering job opportunities to longshoremen with the highest seniority classification and qualifications before offering such job opportunities to longshoremen with a lower seniority classification and qualifications. Qualifications shall mean the ability to perform the job, and if a longshoreman has regularly worked the job in the past, he shall be deemed qualified to work the job. A rebuttable presumption of good faith on the part of the gang foreman in making job assignments shall exist.

9. All persons who were regular, active gang foremen as of January 20, 1969 or who have been approved as a regular active gang foreman since that date, shall be eligible to be included on the list of qualified, regular gang foremen, who shall be selected for such list by the Review Committee, as hereinafter provided, on a non-discriminatory basis.

10. Gang foremen shall be selected to work on the basis of their gang's accumulated earnings on a day to day basis, as indicated by a list which shall be prepared and maintained daily. The gang foreman with the least earnings for his gang shall be selected first to carry a gang.

Nothing in the preceding paragraph shall prejudice any gang foreman from being referred to work, other than in the capacity of gang foreman, in line with his seniority classification.

11. Each Seniority System in each Port shall contain a non-discriminatory provision relating to the requirements that must be met in order to gain future (or additional) seniority or to maintain existing seniority classifications. Each longshoreman shall be reclassified on an annual basis within sixty (60) days following receipt of the work records from the ILA Welfare, Vacation and Pension Records for the preceding year, if he is entitled to be reclassified. The Review Committee, hereinafter provided for, shall constitute the committee to make such annual reclassifications.

12. One representative from each defendant local union which is required under this Order to merge hiring halls shall constitute a Review Committee to hear any grievance of any individual longshoreman, that he has been improperly classified or that he has been improperly referred to work in violation of the common hiring hall plan and/or the final Order of this Court.

13. All defendant local unions shall file with the Clerk of this Court a full and complete report showing the common Seniority System and Hiring Hall Plan adopted by them pursuant to this Order and disclose the classification of each individual longshoreman by name. The plaintiff herein, or any local union and any individual longshoreman is granted leave to file in this Court any objections to the common Seniority System and Hiring Hall Plan within sixty (60) days after the filing of such report which relates to him.

IV.

COMMON SENIORITY SYSTEM AND HIRING HALL PLAN WHERE NO LOCAL UNION IN THE PORT DOING THE SAME KIND OF WORK WHICH HAS BEEN ORDERED BY THIS COURT TO MERGE HIRING HALLS HAS A WRITTEN SENIORITY SYSTEM AND HIRING HALL PLAN

Where no Local Union in the Port doing the same kind of work which has been ordered by this Court to merge hiring halls has a written Seniority System and Hiring Hall Plan, the following standards shall apply:

1. The Review Committee, consisting of one representative from each defendant local union which is required under this Order to merge hiring halls, shall establish in such ports for such work a Common Seniority System and Hiring Hall Plan which is non-discriminatory as to race and color.

2. Such Seniority System and Hiring Hall Plan shall in all respects, consistent with conditions in the Port embody the standards set forth in either Paragraph II or Paragraph III of this Order.

V.

RECORDS AND REPORTING

A. Each Local shall maintain monthly records which reflect:

1. The name and address of each applicant for membership; the date on which he applied, whether or not he was admitted, and, if not, the reason he was not, but no

applicant shall be denied membership because of race or color.

2. A monthly record showing the total number of longshoremen referred by the local union.

3. A monthly record, on a weekly basis, showing the accumulated earnings of all gang foremen.

4. A monthly record showing the individual earnings for the prior month for all longshoremen.

5. Thirty (30) days after the merger of the hiring halls, and every six months thereafter for a total period of two (2) years, a record setting forth the racial composition of all gangs referred, the gang foreman and the company to which referred, shall be kept.

6. All reports required herein shall be racially identified.

If the West Gulf Maritime Association or any other organization maintains, or agrees to maintain such records or similar suitable records which substantially show the above, the defendant need not maintain such records if the West Gulf Maritime Association or other organization agrees to permit inspection of such records by the plaintiff, and has advised counsel for plaintiff thereof.

B. The merged Common Hiring Halls, as provided herein, shall submit to the plaintiff and to this Court:

1. Within thirty (30) days from the establishment of Common Hiring Halls, a seniority list denoting the name, local union and seniority classification of every person.

2. Every twelve (12) months thereafter, for a total period of two (2) years, an updated seniority list noting any changes in any longshoreman's seniority classification.

3. Thirty (30) days after the merger of the hiring halls and every six (6) months thereafter, for a total period of two (2) years, a report listing every person referred through the Common Hiring Hall, the Local Union through which he worked before the establishment of a Common Hiring Hall, and the total number of hours and earnings he received during the previous six months.

4. Thirty (30) days after the merger of the Hiring Halls, and every six (6) months thereafter for a total period of two (2) years, a report setting forth all applicants for membership in each local by name, race, address, and the disposition of their application.

C. Defendants will make all records, applications and other documents relevant to the provisions of this Decree available to plaintiff at the site where such items are kept for inspection, examination and/or copying; if so requested, defendants shall make copies thereof available to plaintiff at plaintiff's expense, but not so frequently as to impose an unreasonable burden or expense on defendants. The plaintiff shall also have the right to inspect the facilities of defendants during regular business hours.

In addition to the regular reports prescribed above, the defendants shall provide any other information relevant to the requirements of this Decree to counsel for plaintiff upon written request and at plaintiff's expense; but such requests shall not be made so frequently or in such detail as to impose an unreasonable burden or expense on defendants.

VI.

1. The defendant shall cease all discriminatory practices which occur at the Port of Freeport. Black employees

shall be permitted to work Dock A-5 without regard to race.

2. At the Port of Galveston, no longshoreman, or no group of longshoremen, shall have any limitation as to the stevedoring companies with which they are permitted to work. The provision in the Collective Bargaining Agreement limiting Local 329 to four stevedoring companies is hereby declared null and void, and defendants are prohibited from enforcing it or causing or attempting to cause any employer or group of employers from enforcing it.

3. In the Port of Brownsville, the work has been allocated on a 75-25% basis between the White and Black Locals respectively, which discriminatory practice shall cease.

VII.

REVIEW COMMITTEE

1. Provision has heretofore been made for a Review Committee with one representative from each defendant Local Union which is required under this Order to merge Hiring Halls. In order to insure continuity of such Committees, each defendant Local Union is hereby required to designate, in addition thereto, one Alternate. Each defendant Local Union shall certify to this Court in writing the name of its Representative and Alternate. In the event that either the Representative and/or Alternate fails, refuses, or becomes unable to serve for any reason, each defendant Local Union shall recertify to the Court its Representative and/or Alternate. In the event the Review Committee cannot agree on a Common Seniority System and Hiring Hall Plan or agree upon the proper classification of any individual, one Representative can

certify that fact to the Court, who in turn, at his discretion, will either decide the issue or appoint an Arbitrator to make a recommendation to the Court.

2. As a further guideline for each defendant Local Union, the Court finds and concludes and Orders each Review Committee, in the establishment of a common Seniority System and Hiring Hall Plan, to take into consideration the necessity for a stabilized work force in the Port with the technilogical changes and innovations already made and being made in the Industry, and their impact upon the job requirements of longshoremen in the future.

VIII.

To implement this Interlocutory Decree, the Court hereby appoints A. A. White as Arbitrator to assist the defendants in formulating written common hiring hall plans appropriate to each port and equitable to the longshoremen, consistent with the Court's "Memorandum" heretofore entered and with this Interlocutory Decree. In the event the defendant unions and their representatives are unable to agree on any particular matter or matters, the Arbitrator shall proceed to resolve these differences and shall file with the Court his reasons, together with a summary of the factors considered. The Arbitrator shall have the power to require any party to make available any facts or information which he may consider relevant to his consideration of the disputed matters.

IX.

This Court shall retain jurisdiction of this matter, with full power and authority to issue any additional Orders necessary to insure equal employment opportunities for

all ILA members, non-member referral candidates, or applicants therefor, without regard to race or national origin.

DONE THIS 1st DAY OF OCTOBER, 1973 at Brownsville, Texas.

/s/ REYNALDO G. GARZA
United States District Judge

APPROVED AS TO FORM:

BROCK & WILLIAMS

By: /s/ WARNER F. BROCK
Warner F. Brock
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By: /s/ ARTHUR J. MANDELL
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Chris Dixie
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ATTORNEYS FOR THE DEFENDANTS

UNITED STATES DEPARTMENT OF JUSTICE

By: /s/ DOUGLAS HURON
Douglas Huron
Washington, D.C.

ATTORNEY FOR THE PLAINTIFF

APPENDIX F

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Civil Action No. 69-B-3

UNITED STATES OF AMERICA, by
JOHN N. MITCHELL, Attorney General,
Plaintiff,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, an unincorporated association; SOUTH ATLANTIC AND GULF COAST DISTRICT, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, an unincorporated association; and Locals 1367, 1368 and 1372, I.L.A., Brownsville, Texas; Locals 872, 1231, 1271, 1273, 1330, 1331, 1525, and 1581, I.L.A., Houston, Texas; Locals 325, 1306, and 1610, I.L.A., Beaumont, Texas; Locals 307, 329, 851 and 1576, I.L.A., Galveston, Texas; Locals 1224, 1225, 1241, 1245, 1280 and 1281, I.L.A., Corpus Christi, Texas; Locals 1723 and 1818, I.L.A., Freeport, Texas; Locals 636, 991, 1405 and 1406, I.L.A., Texas City, Texas; Locals 440, 1029 and 1175, I.L.A., Port Arthur, Texas; Locals 341 and 814, I.L.A., Orange, Texas; Locals 1758 and 1763, I.L.A., Port Lavaca, Texas, unincorporated associations,
Defendants.

(Filed November 12, 1971)

Honorable John N. Mitchell, Attorney General, Jerris Leonard, Assistant Attorney General, David L. Rose, Andrew J. Ruzicho and John W. Davis, Attorneys, Department of Justice, Washington, D.C.; for Plaintiff.

Brock & Williams (Warner F. Brock), of Houston, Texas; for International Longshoremen's Association, South Atlantic and Gulf Coast District, International Longshoremen's Association, and Locals 1372, 872, 1231, 1271, 1330, 1331, 1525, 1581, 325, 1306, 1610, 851, 1225, 1241, 1245, 1281, 1723, 1818, 636, 991, 1405, 1406, 440, 1029, 1175, 341, 814, 1758 and 1763, I.L.A.;

Mandell and Wright (Herman Wright), of Houston, Texas; for Locals 1367, 307, 1576, 1224 and 1280, I.L.A.;

Michael Crawford, of Houston, Texas; for Local 329, I.L.A.

Dixie, Wolf & Hall (Chris Dixie), of Houston, Texas; for Local 1273, I.L.A.

D. J. Lerma, of Brownsville, Texas; for Local 1368, I.L.A.

MEMORANDUM

On January 20, 1969, in which was probably the last case filed by the Johnson administration, then Attorney General Ramsey Clark filed the above suit under Title VII of the Civil Rights Act of 1964, alleging a pattern

or practice of discrimination on grounds of race, color and national origin, in violation of said Act. The Defendants included the International Longshoremen's Association (hereinafter called the I.L.A.), the South Atlantic and Gulf Coast District of the I.L.A. (hereinafter referred to as District), and thirty-seven local general cargo longshoremen's unions chartered by the I.L.A., all of whom are labor organizations within the meaning of 42 U.S.C. 2000e(d), and all of whom are engaged in an industry affecting commerce within the meaning of 42 U.S.C. 2000e(e). As has been stated, the United States has alleged that the Defendant unions have engaged in a pattern or practice of discrimination on the grounds of race and national origin, more particularly that the Defendants have maintained local unions, hiring halls and gangs, which were classified and segregated on the grounds of race and national origin, and that this has resulted in the denying of equal working opportunities to Negro and Mexican-American longshoremen, because of their race or national origin, and that the District, in its contract negotiations with employers, has caused such employers to also discriminate on the grounds of race and national origin. The United States asks this Court to order a merger of the segregated locals and the discontinuance of separate locals, hiring halls and gangs based upon race and national origin, and for such further steps as would be necessary and proper.

With the exception of two Negro locals, one in Galveston and one in Brownsville, both with special problems that will be referred to further on in this opinion, all Defendants are opposed to the merger of locals that the Government proposes, and deny any violation of the Civil Rights Act of 1964.

It took some time to serve all Defendants and for answers to be filed, and with the exception of a few depositions and communications between the United States and some of the attorneys for the Defendants, very little was done in preparation for the trial of this case, until this Court, on May 12, 1970, set a pre-trial in this cause to be held in Houston, Texas, on Tuesday, June 23rd, and the trial of the same was set for Houston, as a place within this District convenient to counsel and witnesses, for July 13, 1970.

In preparation for trial, the depositions of officials of every one of the Defendants were taken.

At the pre-trial on June 23, 1970, the parties agreed to stipulate to as many facts as possible to shorten the time of trial. This was done and an extensive stipulation was filed by the parties, which has been very helpful to the Court.

At the pre-trial, the Defendants urged this Court to dismiss the cause of action on the grounds that the attempt by the United States to merge the local longshoremen's unions was a violation of their constitutional right of association under the First Amendment. The Court took the motion to dismiss on these grounds under consideration, and said it would carry it along with the case. The motion to dismiss on these grounds is now denied.

The Court heard testimony in this cause from July 13th through July 17, 1970, and from September 9th to September 17, 1970. During the trial, hundreds of exhibits, some of them rather bulky, were received in evidence, and the Court has had to read the same and assimilate their contents. The parties, at the conclusion of the trial, were allowed to file briefs, and a schedule

was set up, which, at the request of counsel, had to be extended. In the meantime, some of the Defendants asked to reopen the record for the filing of additional exhibits, all of which requests were granted.

The Defendants in this cause of action represent longshoremen and warehousemen who load and unload ships at warehouses in ports along the Texas Gulf Coast, at Orange, Beaumont, Port Arthur, Galveston, Texas City, Houston, Freeport, Port Lavaca, Corpus Christi and Brownsville. The membership of each local union in these ports is totally segregated on the basis of race or national origin. Of the thirty-seven local unions which are party Defendants, sixteen locals were for White longshoremen and have no Negro members, and nineteen were for Negro longshoremen and have no White members, and two locals are composed predominately of Mexican-American longshoremen.

Because of the Texas Right-to-Work Law, all the locals service and refer many non-members. In fact, it was surprising to find that many, many of the Longshoremen are not union members, but they work through the local union hiring halls. Under the contracts with the employers, the union gets a certain amount from the employer for every longshoreman, be he union member or not, some of this money going to the pension and welfare funds, and the balance to the coffers of the unions, and even non-union members are entitled to attain seniority as longshoremen and to participate in their pension and welfare plans.

While attempts were made to prove to this Court that a Negro could apply for membership in a White local and vice versa, it is obvious that a Negro does not apply

to a White local, and a White does not apply to a Negro local for membership. Negro longshoremen have to be referred out of a Negro local hiring hall, and White longshoremen are referred out of a White longshoreman's hiring hall. While there may have been exceptions in the past, they have been few and far between. The evidence shows that some coastwise general cargo locals have been merged with some deep-sea general cargo locals in their respective ports. The Negro coastwise general cargo locals have been merged with Negro deep-sea general cargo locals, and the White coastwise general cargo locals have been merged with White deep-sea general cargo locals, this happening since the filing of this action.

It has been stipulated that the I.L.A. chartered the locals on the basis of race, and there is no question that it has maintained these locals on the basis of race, has at all times been aware of their segregated nature and has done nothing to seek their merger, or to charter integrated locals since the passage of the Civil Rights Act.

Negro union officials who testified before the Court have urged the Court not to order a merger. They say that by the maintenance of "sister locals" in every port, the Negroes, by having their own unions and their own union officials, have been able to better themselves by being able to hold high positions in their locals, and have been recognized in the community as a separate, powerful voice for the Negro communities, and has attained for them and the Negro people of the community, a standing which they could not have otherwise attained. The Court believes that they are correct in this assumption, but the ultimate issue before the Court is whether this pattern or practice of having segregated locals is

keeping longshoremen, be they Black or White, from equal working opportunities on account of a longshoreman's race or national origin. With the exception of the port of Brownsville, generally the longshoremen's work is divided between the White and Negro locals on a fifty-fifty basis. On its face, this would seem to be a fair shake for the races, but this does not tell the whole story. If in any port there are one hundred Whites available to work on the waterfront as longshoremen and two hundred Negroes, and the work is divided fifty-fifty between the locals, it is obvious that the one hundred Whites will work more hours than the Negroes. The fifty-fifty rule would be ideal if there were an equal number of White longshoremen to Negro longshoremen in every port, but this is not the case. The same situation would exist if instead of one hundred White and two hundred Negro longshoremen, there would be two hundred White and one hundred Negro longshoremen in a given port. In that situation, the Black longshoremen would work more hours than the White. While the Civil Rights Act of 1964 was passed to aid Negroes and other minorities, it was passed to help Whites as much as Negroes, if their civil rights are being violated, and this Court can foresee where in many situations, now and in the future, the Whites will be asking for the protection of Title VII of the Civil Rights Act of 1964.

The Defendants opposing the proposed merger of the "sister locals" have argued vehemently that the Negros, whom the Government assumes to protect by this cause of action, are going to be the losers if the Government prevails; that the Negroes in the several ports involved in this lawsuit are getting 50% of the work, even though the racial composition of the communities is far less than

50%. They urge upon the Court that the Government in the construction industry has brought forth the so-called Philadelphia Plan, seeking job opportunities on the basis of the racial ratio in the area and community, and that if this Plan were to be put into effect, Negroes would only have 19% of the work in Houston, 21% of the work in Galveston, 30% in Beaumont, 27% in Port Arthur, 25% in Orange, 12% of the work in Freeport, 5% of the work in Corpus Christi, and only 1% of the work in Brownsville. They are off target in their argument. It is not the racial composition of the community that should control, but the number of Blacks and Whites that make themselves available for longshore work that counts.

From the many Exhibits before the Court, it is obvious that even under the fifty-fifty rule, Negroes, and in some cases Mexican-Americans, having been segregated on the basis of their race or national origin, have been forced to accept a diminished opportunity to earn wages, receive union benefits, work better cargo and otherwise enjoy employment opportunities solely on the basis of their race. A comparison of the earnings of segregated "sister locals" shows that not only the total earnings of the Negro locals, but also the earnings of individual Negro longshoremen, are less than those that work out of the White local.

Much of this disparity is due to the earnings of individual workers on the waterfront who are members of the locals, but who are hired directly by the employers, and who are not referred by the locals, most of whom are Whites, such as the so-called Gearmen. This situation has been known for a long time, and yet the contracts entered into by and between the industry and the longshoremen have not attempted to correct this situation. However, in fairness to the unions, it must be said that they have tried,

in most cases, most diligently to give 50% of the work to the Whites and 50% of the work to the Blacks, the trouble lying in the basic fact that the 50% given to the Negroes has had to be divided amongst a greater number of Negro longshoremen.

The Government has urged in this case that the very existence of segregated locals is a "per se" violation of Title VII of the Civil Rights Act of 1964. The Government has already been successful in a similar case in upholding this theory. *United States of America v. International Longshoremen's Association, Atlantic Coast District, International Longshoremen's Association, and Locals 829 and 858, I.L.A., Baltimore, Maryland,* D. Md. 1970, 319 F.Supp. 737. This case has been cited with approval by this Circuit in *United States of America v. Jacksonville Terminal Company,* ____F.2d____, (August 31, 1971). In that case, the District Court had held that having segregated locals was not a "per se" violation of Section 703(c) of the Act, 42 U.S.C.A. § 2000e-2(c). *United States of America v. Jacksonville Terminal Company,* 316 F.Supp 567 (M.D. Fla. 1970). Our Circuit, speaking through Judge Dyer, in reversing the case said:

> "Contrary to the allegations made by the Unions, we find that their locals are not mere 'social clubs' having no influence in national union policy or practice. We conclude that the District Court erred in refusing to hold that the failure to consolidate the locals violates section 703(c) of the Act, 42 U.S. C.A. 2000e-2(c). See *United States v. Sheet Metal Workers Local 36, supra* at 127-129; *Local 53, International Association of Heat & Frost Insulators & Asbestos Workers v. Vogler, supra* at 1051-55; *United States v. International Longshoremen's Asso-*

ciation, D. Md. 1970, 319 F.Supp. 737, 741-42; *Hicks v. Crown Zellerbach Corp.,* E.D. La. 1970, 310 F.Supp. 536; *United States v. Local 189, United Papermakers & Paperworkers,* E.D. La. 1969, 301 F.Supp. 906, 919, *aff'd,* 5 Cir., 416 F.2d 980."

If the maintenance of segregated locals is a "per se" violation of the Civil Rights Act, there the matter ends, and the relief sought by the Government, as far as ordering the merger of locals in this case, has to be granted. There is no question that segregated locals were so chartered and are still maintained. See also, *Musicians' Protective Union Local No. 274, A.F. of M., and James Adams, on his own behalf and on behalf of all others similarly situated v. The American Federation of Musicians of the United States and Canada,* E.D. Pa. 1971, 329 F.Supp. 1226.

However, this Court cannot believe that it was the intention of Congress to condemn all segregated locals. If it were, they could have easily said so. The Government must still show that the maintenance of segregated locals constitutes a pattern or practice depriving individuals of working opportunities, because of their race or national origin. However, in this case, the Government has discharged this burden.

In the case of the port of Brownsville, the White local, which has many Mexican-American members, has been given 75% of the work, and Local 1368, a Negro local, has been given only 25% of the work, and naturally, Local 1368 feels that they should be getting 50% of the work, and is therefore in favor of merger. A history of the Brownsville controversy shows that many of the Negro longshoremen seeking work in the port of

Brownsville were recruited from other ports, and the local longshoremen resisted their coming down to take their jobs. The controversy resulted in the establishment of the seventy-five—twenty-five rule. The situation in Brownsville only serves to point out the inequities that can result from segregated locals.

The undersigned Judge is a lifetime resident of Brownsville, Texas, and was present when the first ship came up the Brownsville ship channel to the port of Brownsville, and even though not in the record in this case, if I may be permitted, I will recall the situation of longshoreman work in the port of Brownsville, as I remember it. When having a deep-water port at Brownsville and Port Isabel, Texas, was to become an accomplished fact, a group of men, mostly Anglo, applied for a charter to the I.L.A. The original fight was not so much between Whites and Blacks, as it was between Anglos and Mexican-Americans, who at first were having a hard time getting into the local. There were few Negroes living in the city of Brownsville, and the few that live there had not been engaged in longshore work. Most of them worked for the railroads, a few were hotel porters, some were barber shop shoeshine boys, and one worked for the Coca Cola Bottling Company. When the Whites applied for a charter, a group of Negroes, in line with the practice of the I.L.A. to have "sister locals", applied for a charter for a Negro local. Most of the membership of the Negro local had to come from outside the Brownsville-Port Isabel area. The local people comprising the White local and those working out of its hiring hall, naturally resisted the influx of outsiders who took their jobs away from them. This Court is convinced that if the practice of having segregated locals had not been in

effect, and the few Negroes who were available for longshore work in the port of Brownsville had been allowed to join the White local, the Brownsville situation would never have arisen.

The concern of the Government in this case with the situation of Mexican-Americans, has been mainly brought about by Local 1576 in Galveston. None of its members are Negro, and there are a few Anglos, and the membership is composed mainly of Mexican-American longshoremen. The charter of this local provides that its members can only work bananas and green fruit. This type of work has been drastically reduced, and the members of Local 1576 have very little work at present. It has been testified that the work of unloading bananas and green fruit is the most difficult, physically, of work done by other deep-sea locals. We have a situation where the members of Local 1576, most of whom are Mexican-American as has been stated above, are able-bodied individuals wanting to do longshore work, but being limited in the opportunity of doing this type of work, because of its charter. It has been shown that they must work out of other hiring halls, instead of their own, but when they appear at said hiring halls, they compete with the so-called "casuals", who are not union members. Testimony was received that Local 1576 has taken up the matter of the restriction in their charter with both the District and I.L.A., but the charter remains unchanged. They are not even included in the West Gulf Maritime Association Agreement, even though this has been requested.

There is no question that individuals belonging to 1576 have been denied an opportunity to work as longshoremen, because of the restrictions on their charter. Local 1576 is not seeking a merger, but apparently are demand-

ing an equal right to longshore work in the port of Galveston.

Another local that has joined hands with the Government in seeking a merger of the locals is Local 329. Local 329, a Negro local, is only allowed by the I.L.A. to work for four stevedoring companies. At one time, these companies had a lot of business, but the type of cargo they handled has now dwindled, and Local 329 finds itself with very little work. The problems caused by this situation would not exist if all longshoremen at the port of Galveston belonged to one local. Local 329 has for years been asking the District and the I.L.A. for relief, but to no avail. The stevedoring companies have also joined in asking that Local 329 be given more work.

The basic finding that the Court is making in this cause is that the Defendants have chartered and still maintain locals on a segregated basis, that the prevalent rule of dividing the work fifty-fifty between the White and Negro locals violates Title VII of the Civil Rights Act of 1964, because it deprives longshoremen, be they Black or White, Anglo, Mexican-American or Negro, equal working opportunities depending on which group is in the majority in the different ports, and that this will be a continuing violation in the future.

A merger of locals brings with it many problems, which have to be resolved in the issuing of an equitable decree.

The evidence shows that locals own their own property, on which are housed their hiring halls, these properties not being of the same value, as amongst "sister locals". The question of seniority is also present. Although evidence shows that the I.L.A. and the District have insisted

that every local have a seniority system, no real attempt at having the same seniority system within every local has been undertaken. Since no standard seniority system has been in practice in all the locals, this poses a terrific problem in modeling an equitable decree. The basic hours the longshoremen have to work to achieve seniority have differed greatly from one local to another. Since seniority and the hours worked affect the pension and welfare rights of individual longshoremen, the Court has to be mindful of the great necessity of protecting the rights of those who have spent their lives on the waterfront, as compared to those who only work on the waterfront as a sideline.

Nor is this Court satisfied that the only solution to the problem must include a merger of the locals, for a plan or scheme can be devised that would eradicate the inequity of the basic finding made above, unless the opinion in *United States v. Jacksonville Terminal Company, supra,* dictates such a course.

This Court finds that some of the relief sought by the United States is forthcoming. The Defendants, I am sure, do not agree with this conclusion, and an appeal is almost certain.

The Government has submitted to the Court a proposed decree, with which this Court is not in agreement, as in my view, parts of the proposed decree do violence to the Civil Rights Act and my interpretation of the intent of Congress. A decree that orders the merger of the locals will, of necessity, be different than a decree under the Act that does not so provide. I, therefore, certify under 28 U.S.C. 1292(b) that my findings involve a controlling question of law, as to which there is substantial ground

for difference of opinion, and an immediate appeal may materially advance the ultimate termination of this litigation, and it is the hope of the undersigned that the Honorable Circuit Court of Appeals for the Fifth Circuit will accept an appeal under 28 U.S.C. 1292(b), to determine whether the record in this case entitles the United States to relief, and whether such relief should include an order of merger of the locals involved.

Counsel for the parties will meet to try to formulate a decree for entry in this cause, upon a denial of an appeal under 28 U.S.C. 1292(b), or a final ruling of the Circuit Court of Appeals for the Fifth Circuit, and within sixty days of either event, either submit a proposed decree agreeable to all, or inform the Court of their inability to submit such decree, with their analysis of the points they cannot agree upon.

The Clerk will send copies of this Memorandum to counsel for the parties.

DONE at Brownsville, Texas, this 12th day of November, 1971.

By: /s/ REYNALDO G. GARZA
Reynaldo G. Garza
United States District Judge

FILED
JAN 23 1985
ALEXANDER L. STEVAS
CLERK

NO._____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 851, AFL-CIO, ET AL,
Petitioners

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONERS' PETITION FOR CERTIORARI

SUPPLEMENTAL APPENDIX

BRIEF FOR PETITIONERS

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 69-B-3
(All Ports)

EQUAL EMPLOYMENT OPORTUNITY
COMMISSION,
Plaintiff

v.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, et al.,
Defendants.

(Filed March 22, 1983)

FINAL MERGER ORDER

A. *History*

This suit was filed in January 1969, by the Equal Employment Opportunity Commission (E.E.O.C.) against the International Longshoremen's Association (I.L.A.), the South Atlantic and Gulf Coast District, I.L.A., (the District) and all of the locals of the I.L.A. in the Ports of Texas, alleging that the maintenance of racially segregated locals constituted unlawful racial discrimination in employment. The case was filed in the Brownsville Division before the Honorable Reynaldo G. Garza. After many years of hearings, appointment of Special Masters (Hon. A. A. White and Hon. Andrew L. Jefferson, Jr.) and extensive discovery, parts of the case were taken to the Court of Appeals twice and twice the Supreme Court denied applications for writ of certiorari.[1]

In March 1981, the case was transferred to the Houston Division after Judge Garza's elevation to the Court of Appeals, and it was assigned to the undersigned at that time.

The undersigned undertook to become familiar with the history of the case through the then 240 docket entries on the Court's Docket Sheet and to begin to complete the merger of the sister locals in each port as ordered by the Court of Appeals.[2] The Court has, among other matters, reviewed pleadings, transcripts of prior hearings and recommendations of the Special Masters.

The Court held two mass hearings on August 13, 1982, and March 11, 1983, involving attorneys and other representatives of the twenty-nine actively involved locals. There were special hearings for the Port of Galveston and Port of Houston and innumerable conferences with counsel in chambers.

On August 26, 1982, the Court entered an Interim Order permanently enjoining maintenance of separate locals and setting out a procedure and deadlines for effectuating the merger.

Pursuant to the Order of August 26, 1982, a merger committee was formed in each port consisting of three representatives from each sister local to be merged. These committees were to meet at least weekly to resolve all merger issues including: merging of seniority lists, temporary and permanent hiring hall locations, hiring hall procedures, the form of interim government, election of permanent officers, draft of a new constitution and by-laws, transfer of assets and liabilities, amount of service charge fees or dues, and any other problem related to merger. A detailed, written report on these subjects was

submitted to the District on November 1, 1982, including any areas of disagreement and the alternate solutions proposed.

On December 6, 1982, the District filed with the Court a recommended plan of merger on a port-by-port basis. Wherever possible, the District attempted to resolve areas of disagreement between the merging locals or the District recommended adoption of one alternative and gave supporting reasons. The locals and the E.E.O.C. were given fifteen days to object to the District's recommendations. To insure that every group had an opportunity to be heard, objections and counter-proposals were received and considered by the Court after the deadline and up until the March 11, 1983 hearing.

In summary, this Court is thoroughly familiar with the historical, economic, and political facts in each port and the position advocated by each local. The arguments of all parties, both those represented by counsel and those locals who represented themselves, have been carefully weighed.

From the outset, this Court has stated to all the parties its firm conviction that the mechanics of merging each set of locals was best left in the hands of the parties themselves. Decisions affecting the day-to-day operation of longshoremen's unions are best made by longshoremen, not federal courts. This was the underlying premise for the structure of the August 26, 1982 Order. However, in those instances where the locals could not or would not come to an agreement on certain issues, the Court will choose among the various alternatives presented by the parties. The Fifth Circuit's mandate may no longer be forestalled by disagreements and indecision over how to merge.

The most hotly disputed merger issue has been the merger of seniority lists. The parties' perceptions as to the fairest way to merge them varied widely because of widely disparate standards for earning and maintaining seniority in the various locals, historical animosities and jealousies often pre-dating the work-history of any current member, and de facto agreements about the division or allocation of work in each port. This work division centered around the so-called "50%-50% rule", whereby the work in some ports was allocated one-half to the "black local" and one-half to the "white local." The Fifth Circuit and Judge Garza had previously noted the "tendency" of this ostensibly fair rule to discriminate in any port where the number of individuals available for and seeking work in both the black and the white locals was not the same.[8] This factor was further complicated because two ports had two black locals and one white. In Galveston, a separate Mexican-American local had a charter to unload only green fruit, and in Brownsville there was a "75%-25% rule" between a Mexican-American local and a "black local" which contained white longshoremen.

Mindful that this was a merger that no party except the E.E.O.C. sought, and that practically every local, regardless of racial membership, has resisted merger at some point in this case's fourteen-year history, the Court is aware that no plan it devises is going to please everyone in every particular. Great effort has been made to find the fairest possible solution for each set of locals, giving weight to general as well as peculiarly local problems.

Every port presented a different fact situation. Thus, no one method for merging seniority lists would achieve a fair result in all ports. Where the merger committees

were able to reach an agreement on how to merge their rosters, the Court, after review by the District and the E.E.O.C., accepted and approved their agreement. In those ports where the merger committees could not agree or work out a compromise, the Court is ordering the application of that method which, in the Court's considered opinion, will obtain the most equitable result. In making its decision, the Court was mindful that this is a race discrimination suit. The various choices to be made in this case cannot be based only on the economic criteria employed in the usual corporate merger situation. Here, the merger's purpose is to eliminate an employment practice that discriminates or tends to discriminate on the basis of race and which, therefore, violates federal law.

B. *General Provisions Applicable to All Ports*

It is, therefore, ORDERED, DECREED, and ADJUDGED that:

1. The International Longshoremen's Association has been permanently enjoined since August 26, 1982, and shall be so enjoined from chartering, maintaining, or authorizing racially-segregated locals in any port of Texas.

2. The International Longshoremen's Association shall on or before April 1, 1983, revoke or dissolve the charter of each of the following locals and issue a new charter with a new local number for each of the following sets of locals.

a. *Port of Beaumont:* Locals 325, 1306, and 1610.

b. *Port of Brownsville:* Locals 1367 and 1368.

c. *Port of Corpus Christi:*
   (1) Locals 1224 and 1225.
   (2) Locals 1280 and 1281.

d. *Port of Freeport:* Locals 1723 and 1818.

e. *Port of Galveston:* Locals 307, 329, 851, and 1576.

f. *Port of Houston:*
(1) Locals 872 and 1273.
(2) Locals 1330, 1331, 1525 and 1581.

g. *Port of Orange:* Locals 341 and 814.

h. *Port of Port Arthur:* Locals 1029 and 1175.

i. *Port of Port Lavaca:* Locals 1758 and 1963.

j. *Port of Texas City:* Locals 636 and 991. The International will advise the Court within thirty days if Local 1406 is not going to be dissolved immediately.

3. The above-named locals have been permanently enjoined and restrained since August 26, 1982, and shall be so enjoined, either under their current numbers or the new ones, from discriminating in employment opportunities against any individual on the basis of race, color, or ethnic background, by maintaining separate hiring halls, or from engaging in any act or practice which has the purpose or effect of discriminating against any individual on account of his or her race, color, or ethnic background.

4. Commencing April 1, 1983, each of the above-named sets of locals in each port shall operate and conduct all business out of a single hiring hall as a single local. The hiring hall procedures, interim officers, new Constitution and Bylaws, service charge fees or dues, as approved herein, shall be effective that date. All assets and liabilities of the old locals shall be the property and responsibility of the new merged local, with all decisions regarding the disposition of these assets and liabilities

being made by the officers and executive board of the new merged local.

5. All prior check-off authorizations shall remain in effect and authorizations under the old dissolved local number shall temporarily constitute valid authority for deductions for work performed under the new merged local number. When the new local numbers are made available, any and all check-off authorizations for the deduction of service charge fees, dues, and any and all other permissible deductions shall be reformed by substituting the new local number, and by substituting the new service charge or dues for the amount of such deduction previously authorized for the existing local.

6. This Order will specify below the method to be used to merge the seniority rosters in each port. The Merger Committee(s) for each port shall immediately upon receipt of this Order accomplish the compilation of a merged list according to the prescribed method (if such has not already been accomplished), and file a copy of such list with counsel for the District, Mr. James R. Watson, Jr. The District shall assist the various locals, particularly the smaller ones and those not represented by attorneys, in compiling a merged seniority roster so that the April 1 deadline is met.

7. Upon approval of a merged seniority roster each old local shall appoint one member, and one alternate member, to a seniority review board which shall function in the manner set forth below during the period from the date of the Court's Order until December 31, 1983, or until all complaints pending before it are resolved. Such committee shall exist for the sole purpose of resolving complaints of any individual concerning his/her place-

ment on the seniority list adopted herein, and shall function in accordance with the following procedure:

a. The seniority roster approved by the Court shall be posted in a conspicuous place in the local union hiring hall, along with a notice setting forth the complaint procedure described herein.

b. Any person who feels he has been improperly classified under the seniority system adopted by the Court, or who feels that he has not received proper credit for prior years of service, or who feels that he has been placed at a disadvantage due to the improper classification of some other individual shall have the right to file a written complaint with the seniority review board within thirty (30) days following the posting of the seniority list.

c. Upon the filing of any such complaint, the seniority review board shall promptly investigate same, with the complainant being given full opportunity to be heard. If the complaint is that some other person has been improperly classified, that person shall be given a copy of the complaint and shall also be given full opportunity to present evidence and be heard.

d. Upon completing its investigation, the seniority review board shall make a written report on the results of its investigation to the complainant and, where necessary, to any other person whose standing on the seniority roster is being challenged.

e. Within ten days following receipt of the written report from the seniority review board, any per-

son who deems himself to be adversely affected by such rules shall have the right to file a written appeal with Dean A. A. White, 5532 Sugar Hill, Houston, Texas 77056. Dean White shall review and investigate such appeals, and conduct hearings where he deems it necessary. He shall issue a written decision, which shall be final and binding on all parties. Dean White's reasonable expenses and compensation shall be borne by the new local.

f. The ruling of Dean White made pursuant to the preceding paragraph shall be final and binding.

This procedure shall be followed in each new merged local, unless specifically provided otherwise below.

C. *Particular Orders Applicable to Each Port*

1. *Port of Beaumont*

a. In this port, three deep sea locals are merging into one new local. Historically, the work has been allocated 50% to the white local (Local 1610), and 25% to each of the black locals (Locals 325 and 1306). Yet Local 325 has 34% of the total membership; Local 1306 has 29%; and Local 1610 has 37%.

b. The Master issued an interim order of January 22, 1981, pertaining to this port, attaching a recommended merged seniority roster for the three locals based on length of service. This Court adopted the Master's order in the August 26, 1982 Order.

c. The District and Local 1610 have urged the Court to approve the adoption of a plan which would ensure that Local 1610 longshoremen continued to have

50% of the work available to them. Locals 325 and 1306 urge the application of a length-of-service approach. The E.E.O.C. recommends staying with the Master's list.

The District's analysis in the Watson letter of February 17, 1983, reveals that the application of a length of service approach yields a "ratio-rank" result in this port; that is, the distribution of membership approximates the old local's percentage of total longshoremen available for work in the port of Beaumont. A slotting approach results in gross distortions on the seniority list, with many junior men having a higher place than more senior ones.

d. The Court finds that length of service is the most equitable principle to apply in merging the seniority rosters in Beaumont. Therefore, the updated Master's list attached to the Watson February 17, 1983, letter as Exhibit "D" is hereby approved as the merged seniority list for Locals 325, 1306, and 1610. If a hiring hall procedure that utilizes this list has not yet been prepared and approved, the District is ordered to see that one has been approved in time to be utilized on April 1, 1983.

e. As to all other merger issues, the District's Recommended Plan of Merger for the Port of Beaumont is hereby approved and adopted by the Court as its Order.

2. *Port of Brownsville*

a. In the Port of Brownsville, Deep Sea Locals 1367 and 1368 shall be merged. This port operates on a gang system. Local 1367 is a Mexican-American local, with seventy (70) members, and has been receiving 75% of the available work in Brownsville. Local 1368 is a predominantly black local, with some Mexican-American and Anglo membership. Local 1368 has approximately

fifty members and has been allocated 25% of the available work. Throughout the course of this lawsuit, the E.E.O.C. has expressed concern about the disproportionate work division in Brownsville.

b. The Court approves the Master's and the District's recommendations to continue the gang system in Brownsville. At the March 11, 1983, Hearing Locals 1367 and 1368 agreed to accept each other's seniority lists as valid. According to Mr. Herman Wright's letter to the Court dated February 17, 1983, the Merger Committee has agreed to the seniority system and hiring hall procedures proposed by Local 1367 in its November 1, 1982, report to the District, with certain amendments and modifications listed in Mr. Wright's letter.

The proposed seniority system and written hiring hall procedures, as modified pursuant to Mr. Wright's February 17, 1983, letter, are approved by the Court, with the following conditions:

(1) Of the initial sixteen (16) gang foremen in the new local, ten (10) shall be from Local 1367's list and six (6) from Local 1368's list.

(2) The hiring hall procedures are to be written in such a way that each gang is comprised of longshoremen from Locals 1367's list and Local 1368's list chosen on a nondiscriminatory basis that approximates the 58%-42% ratio of 1367 to 1368 longshoremen who are available to work in the port of Brownsville.

The District is ordered to file with this Court on or before March 28, 1983, a copy of the final approved seniority plan and hiring hall procedure for this port which incorporates the modifications in Mr. Wright's Feb-

ruary 17 letter and which adequately provides for the Court's requirements in subparagraphs (1) and (2) above.

c. The Court approves and orders the use of Local 1367's hiring hall as a temporary hiring hall. The new merged local may decide by democratic process whether to remodel Local 1367's existing hall or acquire a new one.

d. The Constitution and Bylaws as agreed to by the Merger Committee and as modified to meet the provisions of federal law and the International Constitution, pursuant to the Watson letter of February 7, 1983, are approved as the Constitution and Bylaws for the new merged local. The Court is aware that the Bylaws may require amendment regarding the making of discipline decisions by the Seniority Review Board and that counsel were given until March 26 to work out that problem. However, this need not delay the full implementation of this Merger Order in any way. The District shall advise the Court of any approved amendment to the Bylaws in its March 28, 1983, submission of the hiring hall procedures and seniority system.

e. The plan for interim government agreed upon at the December 30, 1982, Watson-Merger Committee meeting and as stated in the Watson letter to the Court of January 10, 1983, is approved and adopted as this Court's Order.

f. The Merger Committee and District's Recommendation for a 5% service charge and dues of $10.50 per quarter, is approved and adopted.

g. Nomination of permanent officers shall take place in December 1983, in accordance with the provi-

sions of Article IX of the approved Constitution and Bylaws for the new local.

h. The District's recommendation for the transfer of all assets and liabilities of both locals is approved and adopted as this Court's Order. The amount owed Dean A. A. White by Local 1368 is to be paid by the new local within thirty days of this Order. The new local is to sell Local 1368's real estate as soon as possible and use the proceeds to pay off, first, the balance of the First National Bank note and, second, the salary owed the current president of Local 1368.

3. *Port of Corpus Christi*

a. *Deep Sea Locals 1224 and 1225* are being merged. The Master entered an Interim Order as to this port on February 23, 1981. The Merger Committee reached agreement on all merger issues as follows:

(1) Local 1224's hiring hall will be used "as is" temporarily and remodeled for permanent use.

(2) The Master's interim order provisions as to a merged seniority roster and hiring hall procedure have been adopted, with the stipulation that a gang system be used for Gold Star and Class "A" longshoremen.

(3) A new Constitution and Bylaws have been adopted.

(4) Interim government will be by a committee comprised of all the officers of the existing locals.

(5) Permanent officers will be elected in December 1983.

(6) All assets and liabilities of the existing locals will be transferred to and assumed by the new local;

(7) The service charge for the new local will be 5% of gross wages. Dues will be $3.00 per month.

The District recommended approval of the above agreements. The Court hereby approves and orders that the above agreements shall be the merger plan for the Port of Corpus Christi deep sea locals.

b. *Warehouse Locals 1280 and 1281.* The Master's February 23, 1981, interim order also applied to the warehouse locals. The 1280-1281 Merger Committee reached agreement on all merger issues as follows:

(1) The new merged Corpus Christi warehouse local will also use Local 1224's existing hall.

(2) The warehouse merger committee agreed on a seniority roster using the gang system and a hiring hall procedure, which was attached to Mr. Watson's letter of January 10, 1983, as Exhibit 1.

(3) A new Constitution and Bylaws were agreed upon and submitted to the District for approval.

(4) Locals 1280 and 1281 have agreed on a procedure for interim government that consists of a special election by the combined membership, whereby one of the current presidents will be elected interim president and the other will become the executive vic-president.

(5) Permanent officers will not be elected until June 1986, in accordance with the new Constitution and Bylaws. The interim officers will serve until that time.

(6) All assets and liabilities of the existing locals will be transferred to and assumed by the new local.

(7) The service charge for the new warehouse local will be 5% of gross wages. Dues will be $15.00 per quarter.

The District recommended approval of the above agreements. The Court hereby approves and orders that the above agreements shall be the merger plan for the Port of Corpus Christi warehouse locals.

4. *Port of Freeport*

a. In this port, Deep Sea Local 1723, with seventy-four members, is merging with Deep Sea Local 1818, which has sixty-five members.

b. The merged seniority roster agreed upon by the Freeport Merger Committee, and attached to the Watson letter to the Court dated February 4, 1983, was recommended for approval by the District. The Court has reviewed the roster and it appears basically fair to both sides. It is hereby approved and adopted by the Court.

c. These two existing locals have been unable to resolve the problem of a hiring hall site on either a temporary or permanent basis, although the Master originally instructed them to find a solution by September 25, 1980. At the March 11, 1983, hearing, counsel informed the Court that the latest series of negotiations for a site had fallen through. The Court therefore orders that Local 1723's present facility shall be used as a temporary hiring hall for the new merged local. The membership of the new local may determine the most feasible way to acquire a permanent hall.

d. To the extent the hiring hall procedure was agreed upon by the Merger Committee and approval recommended by the District, it is hereby approved and adopted. There are two areas in which agreement could not be reached: (1) the selection of gang foreman, and

(2) the foreman for A.M. and P.M. orders. The District recommended approval of Local 1723's proposals on both matters. The Court has reviewed the proposals of both locals on these two subjects and hereby approves and adopts Local 1723's proposals; that is, gang foremen and assistant gang foremen are to be replaced by election, and the same foremen will work the A.M. and P.M. orders.

e. The proposed Constitution and Bylaws for the new deep sea local in Freeport, as amended to comply with the International Constitution and federal law, is hereby approved and adopted.

f. The Freeport Merger Committee could not agree on a plan for interim government of the new local. The proposal by Local 1723, which received the District's recommendation, involves an election timetable that is not workable in view of the April 1 deadline for merger. Therefore, the Court hereby approves and adopts Local 1818's proposal that the present officers of both existing locals shall remain in office during the interim period with shared responsibility for those offices.

g. The election of permanent officers shall be as provided in the approved Constitution and Bylaws.

h. The assets and liabilities of both locals shall be transferred to and assumed by the new local.

i. The Merger Committee's agreement regarding the service charge fee and dues has been recommended by the District. It is hereby approved and adopted.

5. *Port of Galveston*

a. The port of Galveston has presented special problems and vigorously disputed merger issues since the

inception of his lawsuit. In this port, four deep sea locals are merging. The white local, Local 307, has 35% of the total number of the deep sea longshoremen in Galveston and currently performs 38% of the work in that port.[4] Local 329, one of two black locals, has 9% of the longshoremen and performs 6% of the work. Local 851, the other black local, has 21% of the longshoremen and performs 30% of the work. Local 1576, a Mexican-American local, has 34% of the total number of longshoremen and has performed 26% of the longshoring work in that port, over the last three years. Local 1576, the so-called "Banana local," has a green-fruit charter and presently performs only that kind of work. It is undisputed that at this time, the green-fruit work in this port is increasing annually, while all other longshoring work is decreasing. This situation is markedly different than that which existed earlier in this case. A special hearing was held in Galveston on January 28, 1983, to resolve the hiring hall question and for argument on other merger issues.

b. The Merger Committee has not been able to agree on a method for merging the four seniority rosters. The District, in its December 6, 1982, Recommended Plan of Merger for the Port of Galveston, recommended a ratio-rank approach. This formula accepts every longshoreman's seniority in his own former local as valid. It precludes a windfall or a loss to any group. Given the unique relationship and history among the various locals in Galveston, and the fact that Local 1576 is actually "bringing" work to the merger that was not heretofore available to members of other locals, the Court finds that the application of the ratio-rank method would effect the fairest merger of seniority lists in Galveston.

Therefore, the Galveston Merger Committee, with the assistance of the District, is ordered to merge the seniority lists of Locals 307, 329, 851 and 1576 in the following manner:

(1) *Step 1:* Combine the seniority lists of the two black locals, Locals 329 and 851, using a straight length of service procedure. Decide all ties by lot. This will essentially equalize the black and white general cargo deep sea locals, both in terms of size and work performed.

(2) *Step 2:* Merge the three resulting seniority lists, applying the ratio-rank method. Ties within an existing union in rank should be decided by lot. Ties among longshoremen from different existing locals in forming the composite merged list should be decided by length of service first, then by lot. There is to be no "reclassification" of any local's seniority list. No local's seniority is to be discredited because of varying standards.

c. The hiring hall question has previously been resolved by this Court. Local 851's hiring hall shall be used by the new merged local.

d. The written hiring hall procedures as proposed by the Merger Committee and recommended by the District, shall be reformed as necessary to conform to the merged seniority roster compiled pursuant to subparagraph b above, and to give full credit for the seniority each longshoreman validly earned in his existing local. A copy of this redrafted hiring hall procedure will be filed with the Court by the District no later than March 28, 1983, along with the District's recommendation for approval.

e. The proposed Constitution and Bylaws for the new local, as amended pursuant to the Watson letter to

the Court of February 4, 1983, and the Merger Committee letter to the District of February 21, 1983, are hereby approved and adopted.

Objections have been filed by individual locals as to Bylaw provisions allowing retirees to vote and regarding the amount of pay for officers of the new local. The Court believes that these are internal organizational matters best decided by the Merger Committee, not a federal court. They do not directly bear upon the purpose of the merger. Therefore, the Court will not second-guess the Merger Committee on those questions.

f. The Galveston Merger Committee elected interim officers from the Merger Committee membership. An objection to this election has been made by Locals 851 and 329. The District recommended approval of the elected officers and their amount of pay. The Court finds nothing in the Galveston Merger Committee's provision for interim government which violates either the letter or spirit of the August 26 Order or affects the goals of the merger. The Merger committee's proposals are hereby approved and adopted.

g. The Merger Committee's agreement that the election of permanent officers will be in accordance with the new Constitution and Bylaws is approved and adopted. Nomination and election of permanent officers shall take place in November and December of 1983 respectively.

h. The Merger Committee agreed on the transfer of assets and liabilities to the new local. Their agreement is approved and adopted.

i. The Merger Committee's agreement as to a 5% service charge fee and dues as set forth in the new Constitution and Bylaws is approved and adopted.

j. Other merger issues pertaining to burial plans, insurance, and credit union membership are to be resolved by the Merger Committee, or after April 1 by the interim officers, and executive board, in a nondiscriminatory manner.

6. *Port of Houston—Deep Sea Locals*

a. Two large deep sea locals are being merged in the Port of Houston. Each has just over 1,000 classified longshoremen. They have been splitting the work of this port 50-50.

b. The most serious controversy in this port has revolved around the seniority roster. The two Masters appointed for the Houston Deep Sea Locals, after five years of proceedings, compiled an accurate seniority list for each local through fiscal year 1979. These component lists were certified to the Court as accurate, both as to the listing of classified longshoremen and the correct credited years of seniority for past service rendered by each longshoreman according to the applicable rules and standards of his local. The Masters' component seniority lists are hereby adopted as final by this Court. Both locals have subsequently updated their component lists through fiscal year 1982.

The two locals have proposed different methods for consolidating the two component lists. Local 872 urges the Court to adopt a simple length of service approach. Local 1273 proposes a "slotting" method with grouping in equal numbers (so far as practicable) in one-year seniority positions. Upon analysis, the 1273 proposal is actually a hybrid procedure, which utilizes features of the length of service, slotting, and ratio-rank methods. The District did not object to the 1273 plan.

Due to the singular situation of the Port of Houston Deep Sea Locals, in that the merger involves only two locals, of substantially the same size, who have each been doing one-half the available work, the Court finds that the method proposed by Local 1273 is the most equitable procedure for consolidating the seniority lists of Local 872 and 1273. This will effectively place each longshoreman in the same position regarding the total available work in the port as he was in prior to the merger. The Court deems this appropriate, since there has been no evidence of actual past discrimination in this port.

It is agreed by all parties and the Court finds that an application of the ratio-rank method to the Houston Deep Sea Locals would yield substantially the same result as the method proposed by Local 1273. There is no reason to undertake such a lengthy and complicated process which would only serve to delay the merger.

It is, therefore, ordered that the component lists for the payroll fiscal year ending September of 1982 of Locals 872 and 1273, heretofore submitted to this Court, shall be merged by slotting the longshoremen of the two locals upon a one-for-one basis; that is, alternately matching the longshoremen of the two locals in the order of their seniority in equal numbers as nearly as practicable in each of the thirty-seven seniority positions. The longshoremen of the two locals should be grouped in equal numbers so far as practicable in these one-year seniority positions. Minor variations in precisely equal-number slotting in seniority positions are appropriate in the interest of placing in the same seniority positions those longshoremen of each local who earned equal credit for past service. A supplementary order on the Houston Deep Sea Locals, adopting and attaching the merged seniority

roster prepared by Local 1273 and submitted to the Court on March 17, 1983, will be issued this date.

The seniority review board procedure described in paragraph B.7 above shall be applicable to the new Houston Deep Sea Local, but review will be limited to fiscal years 1980, 1981, and 1982.

c. Local 1273's hiring hall shall be used on a temporary basis, commencing April 1, 1983, until the new merged local can complete arrangements for a larger permanent hiring hall.

d. A final written hiring hall procedure for the new deep sea local in Houston has not been possible because of the controversy over the merged seniority list issue. The Merger Committee is directed to provide the District and the Court with a final proposed written hiring hall procedure no later than March 28, 1983. The District will inform the Court in writing by March 30, 1983, of any objection or its recommendation of approval. The hiring hall procedure should provide that the past seniority credit for each longshoreman is fixed only through fiscal year 1979. Any adjustment of seniority credit for time subsequent to FY 1979 shall be in accordance with the procedures outlined in subparagraph B.7 above.

e. The new Constitution and Bylaws, as amended to conform to the requirements of the International and applicable federal law, pursuant to the Watson letter of February 7, 1983, to the Court are approved and adopted.

f. The Merger Committee agreed upon a slate of officers for interim government of the new merged local and that election of permanent officers would be in 1984

in accordance with the new Constitution and Bylaws. The District recommended approval. The Merger Committee's decisions on these issues are approved and adopted.

g. The Merger Committee agreed upon a service charge fee of 4% of gross wages for the new local. The District recommended approval. The service charge fee is approved and adopted.

h. There has been difficulty and delay in securing an audited financial statement of Local 872. At this time, such statement has been provided, and Local 1273's auditors are inspecting 872's books and records. Additionally, Local 872's real estate is entangled in a suit to try title in State court. A hearing on this matter is scheduled before this Court on April 4, 1983.

Therefore, all steps shall be taken to convey insofar as is legally possible, the assets and liabilities of Locals 872 and 1273 to the new local immediately. Furthermore, from April 1, 1983, all decisions about the disposition of or legal steps necessary to clear title to, Local 872's assets shall be made by the interim officers. A supplementary report on this merger issue will be filed with the Court by the new local within 45 days of the date of this Order.

7. *Port of Houston—Warehouse Locals.*

a. Four warehouse locals are merging in the Port of Houston. Local 1330 has 220 members; Local 1331 has 226; Local 1525 has 89; and Local 1581 has 63.

b. The immediate and complete merging of the seniority lists of all four locals is rendered impossible by

their participation in two separate pension, vacation and welfare (PVW) plans. Locals 1330 and 1331 have a contract with the West Gulf Maritime Association (WGMA), while Locals 1525 and 1581 have a contract with a smaller employer group. These plans are administered through separate Taft-Hartley trust agreements which are strictly governed and regulated by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.* The merger of the two plans requires a lengthy and complicated procedure involving agreement on the part of the two employer groups, an actuarial study of the Local 1580-1581 plan, and probably an additional contribution by Local's 1580-1581's employers.

Because of the different PVW plans, the Merger Committee has proposed that Locals 1330's and 1331's seniority rosters be merged into one seniority list, and Locals 1580's and 1581's rosters merged into another seniority list. Initially, within the new merged warehouse local there would two different lines of seniority. Group I would consist of the present Local 1330-1331 longshoremen and Group II would consist of the present Local 1525-1581 longshoremen. After two years, a Group III would be started which would operate along with Groups I and II for a three-year period. It is believed that at the end of this five-year period, by virtue of attrition and extensive collective bargaining and negotiations, a single line of seniority and a single PVW plan could be created. The District has not objected to this proposal.

While the above-described five-year plan is far from ideal, it is the only practical solution to the two-PVW funds problem which has been put before the Court. It is

therefore approved and adopted, with the understanding that the District, the officers of the new warehouse local, and any future negotiating teams from the new local are under an on-going obligation to utilize their full efforts, energies and resources to achieve a single seniority list for hiring purposes as soon as possible, but in no event longer than five years.

c. Locals 1330 and 1331 have been unable to agree on a merged seniority roster. Local 1331 urges a straight length-of-service approach giving each longshoreman full credit for the years now credited him by his existing local. Local 1330 originally proposed, and the District recommended, adjusting Local 1331's seniority list by a 300-hour standard for earlier years, and then applying a length-of-service method. On March 4, 1983, Local 1330, in a supplemental response to the District's recommendations, proposed a third approach—a "slotting" and grouping within classifications—a method very similar to that approved for the Houston Deep Sea Locals. The Court has carefully reviewed the lists that result from application of each procedure. The 1330 proposal approximates a ratio-rank merging of the two rosters. This is the fairest and most appropriate result between these two locals of almost equal size who have been splitting the available work evenly. The Court approves and adopts the Local 1330 proposal for merging Locals 1330's and 1331's seniority lists.

d. Locals 1525 and 1581 have submitted through their counsel, Mr. Herman Wright, a merged seniority roster based on length of service. There are still disagreements between the two locals as to the validity of the other's list. The Court has had great difficulty in securing seniority rosters for these two locals. Four and one-half

months after the lists were due to the District, there are still problems. Therefore, the Court now orders that Locals 1525's and 1581's seniority lists be merged on a ratio-rank basis. The District shall give whatever assistance is required, so that hiring from a merged list may commence April 1, 1983.

e. Local 1330's hiring hall shall be used by all four warehouse locals on a temporary basis. The membership may decide on a democratic basis what provisions to make for a permanent hiring hall.

f. The agreed-upon hiring hall procedures submitted by Mr. Eric Nelson's February 4, 1983, letter to Mr. Watson, are approved and adopted. Local 1330's proposal for Sections 18-22 of the hiring hall procedures appear fair and reasonable to the Court, and no alternative proposals have been presented. Local 1330's proposal for these sections is approved to the extent they are consistent with the merged seniority system adopted in subparagraph c above. A final amended version of a hiring hall procedure shall be submitted by counsel to the District by March 28, 1983. The District will notify the Court of any disapproval by March 30, 1983.

g. The Constitution and Bylaws agreed upon by the parties is approved and adopted. The Court is advised by Mr. Nelson's March 15, 1983, letter that the disagreement over salary structure for the officers has been resolved.

h. The parties' agreement regarding officers for interim government appears fair and is approved by the Court.

i. The plan to have election of permanent officers on November 1, 1984, is approved and adopted.

j. The assets and liabilities of all four warehouse locals will be transferred to and assumed by the new merged local. All decisions regarding the disposition of the assets will be made by the officers and executive board of the new local.

k. The agreed-upon service charge fee of 5% of gross wages is approved and adopted.

8. *Port of Orange*

a. In the Port of Orange, Deep Sea Local 341 with twenty-five members is being merged with Local 814 which has thirty-five members. The Master made certain findings of fact and conclusions of law dated August 29, 1980. This Court adopted them in its August 26, 1982 Order.

b. The Port of Orange Merger Committee agreed upon a merged seniority roster. The District recommended approval of that list in its Recommended Plan of Merger for the Port of Orange. The Court hereby approves and adopts that roster for the new local in Orange.

c. The Merger Committee could not agree on either a temporary or permanent hiring hall. The Court hereby orders that Local 814's hiring hall be used as a temporary hiring hall. The membership of the new merged local may be decided on a democratic basis what arrangements are most feasible for a permanent hiring hall.

d. The hiring hall procedures agreed to by the Merger Committee and recommended by the District are approved and adopted by the Court.

e. The Merger Committee has agreed upon a new Constitution and Bylaws; however, they have not been

submitted to the District for approval. The Merger Committee is hereby ordered to submit the proposed Constitution and Bylaws to the District for approval within seven days of the date of this Order. The District shall inform the Court immediately of any problem regarding this issue.

f. The Merger Committee has agreed that all of the present officers of the existing locals will be retained on an interim basis, with shared responsibilities for each office and with each continuing to receive his usual pay. The Court approves and adopts the Merger Committee's proposal.

g. The Merger Committee has proposed the nomination of permanent officers for the new merged local in November 1983, election in December 1983, and assumption of office in January 1984. The Court approves and adopts the Merger Committee's proposal.

h. All assets and liabilities of the existing locals shall be transferred to and assumed by the new local.

i. The District recommended approval of the Merger Committee's proposed 5% service charge. It is so approved and adopted by the Court.

9. *Port of Port Arthur*

a. Deep Sea Local 1029, with approximately seventy members, is merging with Deep Sea Local 1175 which has approximately fifty members.

b. The Merger Committee agreed upon, and the District recommended approval of, a merged seniority roster, written hiring hall procedures, disposition of assets and liabilities, a 5% service charge, dues of $1.00 per month, and a plan for interim government by a joint-

officer system with shared duties and rotating business agents. The Merger Committee's proposals on these merger issues as contained in the District's Recommended Plan of Merger for the Port of Port Arthur are hereby approved and adopted by the Court.

c. The election of permanent officers shall take place in late 1983 in accordance with the provisions of the new local's Constitution and Bylaws.

d. The new Constitution and Bylaws are approved and adopted by the Court, as modified and amended pursuant to the Watson letter of February 18, 1983, to the Court.

e. Locals 1029 and 1175 have purchased a new hiring hall at 321 Shreveport Avenue in Port Arthur, which they plan to occupy on April 1, 1983. Should there be any delay in the new building's availability, Local 1029's hiring hall shall be used on a temporary basis.

f. Warehouse Local 440 in Port Arthur reportedly operates on an integrated and completely non-discriminatory basis. It does not compete with or share available work with any other longshoremen's local in Port Arthur. It has been retained in this case, at the request of the E.E.O.C., only for monitoring purposes. Therefore, Local 440 is not being merged with any other existing local, nor being required to change any of its operating procedures.

10. *Port of Port Lavaca*

a. Locals 1758 and 1763, with a combined membership of eighty-four longshoremen, are merging in Port Lavaca. On August 26, 1982, this Court adopted the

Master's August 29, 1980, recommendations for the merger of these two locals. The District recommended merger in accordance with the Master's plan. By letter hand-delivered to the Court on September 7, 1982, the presidents and business agents of Locals 1758 and 1763 stated they have been operating on an integrated basis for eight years and have no merger problems.

b. The seniority roster attached to the Master's recommendations, as updated by the attachment to the Merger Committee's September 7, 1982, letter, is approved and adopted.

c. Local 1758's hiring hall shall be used by the new merged local.

d. The hiring hall procedures, interim government agreement, and service charge fee provision in the Master's recommendations, as modified by attachment to the Merger Committee's September 7, 1982, letter, are approved and adopted.

e. The agreed upon Constitution and Bylaws, as modified by the Watson February 7, 1983, letter to the Court, are approved and adopted.

f. Election of permanent officers shall be in accordance with the provisions of the new Constitution and Bylaws. Nominations will be in November of 1983.

g. All assets and liabilities of the two existing locals shall be transferred to and assumed by the new merged local.

11. *Port of Texas City*

a. Deep Sea Locals 636 and 991 are merging. Local 636 has approximately eighty-six members. Local

991 originally submitted the names of fifteen members, but now reports an additional twenty-one names, six of whom are shown to be retired.

b. The seniority rosters are being merged by agreement of the Merger Committee and with the District's recommendation on a length of service basis. The Court has given Local 991 until April 1, 1983, to document the seniority of the additional names to the satisfaction of both the Merger Committee and the District. If this deadline is not met, the merged seniority list shall be approved and adopted in the form attached to Mr. Watson's letter of November 1, 1982, to the Court.

c. Local 636's present hiring hall will be used by the new merged local.

d. The Merger Committee reached agreement on the use of Local 636's current hiring hall procedures, a slate of officers and an executive board for the interim period, and a service charge fee of 5% of net pay plus $3.50 dues per quarter. The District has recommended approval of these proposals. The Court hereby approves and adopts the Merger Committee's proposals on the above items.

e. The proposed Constitution and Bylaws, as modified by the Watson February 7, 1983, letter to the Court, are approved and adopted.

f. Election of permanent officers shall be in accordance with the new Constitution and Bylaws. Nominations shall take place at the December 1983 meeting.

g. All assets and liabilities of the existing locals shall be immediately transferred to the new local. The Court is aware that Local 636 has substantial assets,

while Local 991 has none. However, the I.L.A. International Constitution prohibits any distribution to the members of Local 636.

h. Local 1406 has reportedly disbanded and has not been active since the Texas City disaster of 1947. Thus, while formally still a named party to this suit, Local 1406 has not been included in the merger negotiations. The District has been ordered in paragraph B.2.j. above to report to the Court within thirty days if this local is not being dissolved immediately.

D. *Conclusion*

1. Within thirty days of the date of this Order, the District shall file with this Court a supplementary report for each port, giving the new local number, the address of the temporary hiring hall, names and positions of the interim officers, a copy of the new local's hiring hall procedures and a complete merged seniority list for each local compiled pursuant to this Order.

2. The E.E.O.C. has proposed an oversight committee to monitor compliance with this Order, but the Court has decided that it would be best, for the time being, to place full responsibility for compliance on the parties themselves to complete the merger and permit the longshoremen to get on with the business of longshoring. The parties have been regularly and clearly warned by the Court the consequences which will befall them should they violate the letter or spirit of this Order. They know that the time for resisting merger has long since passed, and that they will be monitored by the E.E.O.C., by the International, by the District and by each other. Further oversight will be considered only upon a showing of good cause.

3. None of the terms of merger as set forth herein shall be modified or amended without prior approval of the Court prior to the election of permanent officers.

4. To the extent anything in this Order contradicts or conflicts with any previous orders in this case, this Order shall prevail.

5. The Court has directed the Clerk of Court to subdivide the file in this cause into subfiles by ports. Pursuant to that order, all documents relating to the Interim Merger Order of August 26, 1982, are kept by port. The subdivisions shall be kept intact so that reference to any matter in this Order may be found hereafter in the particular port's subfile.

6. The Court must note in conclusion that the task of merger has been eased by the diligent efforts of Special Masters Jefferson and White, and the Court commends them for their dedication to their duties.

Done at Houston, Texas, this 22nd day of March, 1983.

/s/ NORMAN W. BLACK
Norman W. Black
United States District Judge

Office-Supreme Court, U.S.
FILED
FEB 15 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1004

In the Supreme Court of the United States

OCTOBER TERM, 1984

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCALS 329 AND 851, AFL-CIO, ET AL.,
PETITIONERS

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the district court abused its discretion in selecting the ratio-rank method for merging the seniority lists of four local unions.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-2a) and the order of the district court (Pet. App. 6a-10a) were unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 17, 1984. A petition for a writ of certiorari was filed on December 17, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners challenge the method used to merge the seniority lists of previously segregated longshoremen's locals.

1. In 1969, the United States Attorney General filed this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, against the International Longshoremen's Association (ILA), the South Atlantic and Gulf Coast District of the ILA, and 37 local unions (Pet. App. 34a-35a).[1] The Attorney General sought to end the practice of maintaining segregated longshore locals in the ports of Texas. In 1975, the court of appeals held that the practice was unlawful and ordered that the locals be merged. *EEOC* v. *ILA*, 511 F.2d 273 (5th Cir.), cert. denied, 423 U.S. 994 (1975). Five years later, the court reaffirmed its merger order in an appeal involving only the four Galveston locals, including petitioners. *EEOC* v. *ILA*, 623 F.2d 1054 (5th Cir. 1980), cert. denied, 451 U.S. 917 (1981).

Prior to the merger, the Port of Galveston consisted of four longshore locals segregated on the basis of race and national origin. The petitioners, Locals 851 and 329, were black; Local 307 was white; and Local 1576 was Mexican-American (*EEOC* v. *ILA*, 623 F.2d at 1055). The white local and the larger black local, 851, performed "deep sea" cargo work. The smaller black local, 329, was permitted to work only for four stevedoring companies. The Mexican-American local was confined to "green fruit" work. Pet. 13-14. There was little green fruit work available at the time the Mexican-American local came into existence; at the

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[1]Effective March 1974, the Attorney General's authority to bring a Title VII action alleging a pattern or practice of discrimination was transferred to the Equal Employment Opportunity Commission (EEOC). Pursuant to 42 U.S.C. 2000e-6(d) and (c), this suit was continued without abatement and the EEOC was substituted as a party.

time of the merger, however, this work comprised approximately a quarter of the total longshore work in Galveston, and was gradually increasing (Pet. App. 7a).[2]

The locals each used different criteria for determining seniority. The Mexican-American local's requirements for a year's seniority were low — until 1968 a worker could obtain one year's seniority by working only one boat per year; from 1968 to 1972 the requirement was 20 boats per year; and in 1972 it was changed to 300 hours. The smaller black local always required 400 hours of work each year for a year's seniority. The larger black local and the white local have, since 1951, required at least 700 hours each year to obtain a year's seniority. Pet. 5.

2. The district court established in each port, including Galveston, a merger committee of the local unions to resolve all merger issues (see Pet. App. 30a). If a committee could not agree, the governing ILA District was directed to make recommendations (*ibid.*).[3] Because the four local unions in Galveston could not agree on a method for merging their seniority lists, the ILA District submitted its recommendation (Pet. App. 7a). The ILA District recommended that individual longshoremen be given credit for seniority in accordance with the criteria recognized by each local and that no local experience either a windfall or a significant loss of work opportunities because of the merger

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[2]For the years 1980 through 1982, the white local performed 38% of the work, and had 35% of the workers; the larger black local performed 30% of the work with 21% of the workers; the smaller black local performed 6% of the work with 9% of the workers; and the Mexican-American local performed 26% of the work with 34% of the workers. C.R. 334, at 19 ("C.R." refers to the clerk's record in the district court.)

[3]The court explained that "decisions affecting the day-to-day operations of longshoremen's unions are best made by longshoremen not federal courts" (see C.R. 334, at 4).

(see C.R. 29a; Memorandum in Support of District's Recommendations Regarding Seniority Roster 9). It recommended use of a modified "ratio-rank" method as the most effective means of achieving that goal (C.R. 330; 3/11/83 Tr. 25, 27-28). Under that method, each longshoreman's position on the merged list approximates his position on the former list of his local, with some weighting to reflect the differing sizes of the three locals. Thus, if a worker was located in the top 25% of his local's seniority list, he retains that position in the merged list; if the worker was in the bottom quarter, he retains that position (compare C.R. 370A and 370B).

After entertaining objections and counterproposals to that recommendation the district court adopted the ILA District recommendation, finding that the ratio-rank method "precludes a windfall or loss to any group" and that (Pet. App. 7a),

> [g]iven the unique relationship and history among the various locals in Galveston, and the fact that Local 1576 [the Mexican-American local] is actually "bringing" work to the merger that was not heretofore available to members of other locals, the Court finds that the application of the ratio-rank method would effect the fairest merger of seniority lists in Galveston.

The court directed that the local seniority rosters be merged on the ratio-rank basis (*id.* at 7a-8a).[4]

The two black locals appealed and the court of appeals affirmed (Pet. App. 1a-2a). The court of appeals found that the district court had not abused its discretion in ordering

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[4]The district court first ordered that the seniority rosters of the two black locals be merged on a straight "length of service" basis, with ties decided by lot, in order to equalize the size of the black, white and Mexican-American lists (Pet. App. 7a). No party has objected to this part of the court's order.

use of the ratio-rank method. The court concluded: "Preserving the work expectancies [of the longshoremen] through use of the ratio-rank formulation for merger of seniority lists of existing unions into new Local 20 at the Port of Galveston was a fair resolution of the equitable issues presented to the district court" (*ibid.*).

ARGUMENT

Petitioners do not suggest any sound reason why the Court should review the court of appeals' decision that the district court did not abuse its discretion in ordering use of the "ratio-rank" method.

1. Title VII vests the district courts with broad equitable discretion to fashion appropriate orders to remedy unlawful discrimination. *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747, 763 (1976). In undertaking the complex task of merging the Galveston locals' seniority lists — a task that has been termed "notoriously difficult" (*Truck Drivers Local 568* v. *NLRB*, 379 F.2d 137, 142 (D.C. Cir. 1967) — the district court acted well within the scope of its discretion in selecting the ratio-rank method.[5] Indeed, where, as here, the merging entities' seniority standards are vastly different, it is considered preferable to utilize a ratio-rank procedure in order substantially to maintain the same seniority privileges as persons enjoyed prior to the merger (see Kennedy, *Merging Seniority Lists*, in *Labor Arbitration & Industrial Change — Proceedings of the 16th*

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[5]Merger of seniority systems is frequently a thorny issue when bargaining units are consolidated because of business mergers, and "courts have approved a wide variety of systems for merging seniority lists of entities that are consolidating their operations" (*Smith* v. *Baltimore & O.R.R.*, 485 F. Supp. 1026, 1029 (D. Md. 1980)).

Annual Meeting of the National Academy of Arbitrators (M. Kahn ed. 1963)).[6]

Petitioners have cited no cases that suggest that the ratio-rank method of merging seniority systems is an inappropriate remedy under Title VII. Instead, conceding "that a merger of the seniority lists in a manner that is equitable is at best difficult" (Pet. 14),[7] they propose that this Court order the use of one of two alternative methods. Petitioners propose, first, that the seniority systems should be merged on a "follow the work" principle. Under this approach, separate seniority lists would be maintained for different types of work so that workers would be able to continue to perform the type of work they performed previously (*ibid.*). However, as petitioners acknowledge (*ibid.*), the "follow the work" method is inappropriate because the object of this litigation was to merge the unions and end segregated work opportunities. It would run counter to the entire purpose of Title VII relief to establish separate seniority lists and allocate placement on those lists using the past limitations on the type of work each local could undertake. That would perpetuate, not eliminate, segregation.[8]

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[6]As stated by Professor Kennedy (at 27 (citation omitted)):

> [the ratio-rank method] eliminates the windfalls and losses in seniority rights which occur if the length of service principle is employed to consolidate two seniority lists which have considerable difference in their length-of-service structure. When the ratio-rank principle is used, the employees retain their relative positions on the merged seniority list. It is argued that "this substantially maintains the same seniority privileges as the persons enjoyed under the two separate lists."

[7]As the district court aptly observed, "only the good Lord himself could design a system that all of [the union members would] think is perfect. * * * So I've just got to do what is the fairest for the most" (C.R. 385; Tr. 58.

[8]Petitioners suggest (Pet. 15) that this problem might be avoided by merging the four seniority lists in a manner that they do not explain, but

Petitioners' second alternative, the "length of service" proposal (Pet. 15), is also flawed. As we understand it, longshoremen would be slotted into a merged seniority roster according to their years of service, as defined by the standard of the local to which each belonged. This method would treat longshoremen "as if they had always been employed by the same company" (Pet. 15) when, in fact, they were not. The main result of the application of this method would be enhancement of the seniority of black workers at the expense of Mexican-American workers.[9] Petitioner cites no authority establishing that the length of service method is mandatory, or even preferable.

2. Petitioners claim (Pet. 8-13) that the court's remedial order conflicts with *Firefighters Local Union No. 1784* v. *Stotts*, No. 82-206 (June 12, 1984), because it "divests" their members of accrued seniority. This argument misconstrues the nature of the district court's order. The fact that the first man on the roster of the Mexican-American local may have earned credit for one year of service by working 300 hours a year, whereas the first man on petitioners' roster may have had to work 700 hours to earn a year's credit, does not alter the fact that each was at the top of his roster and was

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that sounds like the "absolute-rank" method (see Kennedy, *supra*, at 22-26). Application of this method is warranted only when all seniority lists are about the same size (*id.* at 24-25). If applied as petitioners appear to suggest, it would provide a windfall to their members, since they are the two smallest locals.

[9]Under petitioners' length of service approach, the Mexican-American local would receive only 3 of the first 50 and 17 of the first 100 slots on the merged roster, though they are bringing 34% of the workers and 26% of the work to the merger. Petitioners, on the other hand, with 30% of the men and 36% of the work, would garner 32 of the first 50 and 58 of the first 100 slots. See C.R. 370B. At the other end of the list, members of the Mexican-American local would occupy 40% of the bottom half of the slots, while petitioners' members would occupy only 24.3% of those slots (*ibid.*).

entitled to work at will. It is that work expectation which the court sought to protect by the use of the ratio-rank method to merge the seniority lists. No one has been divested of anything.[10] The court's decision is not inconsistent with *Firefighters' Local Union No. 1784* v. *Stotts, supra,* which did not involve the merger of seniority systems. Nothing in the Court's opinion is contrary to the district court's decision in this case, which did not divest workers of their seniority rights, but rather sought to protect those rights by using the ratio-rank method to maintain substantially the same work opportunities for employees on the merged roster as they had on their prior seniority lists.

CONCLUSION

For the foregoing reasons the petition for certiorari should be denied.

Respectfully submitted.

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FEBRUARY 1985

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[10]Petitioners suggest in passing (Pet. 8) that the district court's order somehow affects post-employment benefits. There is no support for this contention, since the merged seniority list only determines day-to-day hiring prioirities. In any case, petitioners do not explain how their members have been divested of any such benefits.

DOJ-1985-02